No. & Case.

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Validity of taxation by N.Y. of shares in Nat. Banks.

Jan. 25. 1882

TRANSCRIPT OF RECORD.

UNITED STATES SUPREME COURT.

No. 817.

CHARLES A. HILLS, RECEIVER OF TAXES, AND MICHAEL E. HIGGINS, MARSHAL OF THE CITY OF ALBANY, APPELLANTS,

against

THE NATIONAL ALBANY EXCHANGE BANK, APPELLEE.

ON APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES IN AND FOR THE NORTHERN DISTRICT OF NEW YORK.

FILED MARCH 18, 1881.

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1 UNITED STATES CIRCUIT COURT.

NORTHERN DISTRICT OF NEW YORK.

THE NATIONAL ALBANY EXCHANGE BANK
against
CHARLES A. HILLS, Receiver of Taxes, and MICHAEL E. HIGGINS, Marshal of the city of Albany.

The complainant in the above entitled cause filed its bill of complaint, which is hereto annexed, on the 14th day of May, 1880, against the defendants herein. A subpœna to appear and answer in said cause was thereupon issued and was served
2 personally previous to the return day thereof on each of the defendants.

The defendants duly appeared in said cause by R. W. Peckham, Esquire, as their solicitor, and answered to the bill of complaint, which said answer was filed and is hereto annexed.

The complainant filed its replication to the said answer of defendants, which is hereto annexed.

Testimony was taken in said cause on the part of complainant and defendants and was filed and the said cause came on to be heard at Chambers on the sixth day of November, 1880, in the city of Syracuse before the Honorable William J. Wallace, Judge, and was argued by counsel for the respective parties, and
3 on the second day of December thereafter the court filed its opinion in said cause in favor of the complainant.

On the 8th day of December, A. D. 1880, the said court caused its final decree to be made and entered herein for an injunction against defendants and costs to complainants, which final decree is hereto annexed.

To the Honorable the Judges of the Circuit Court of the United States, within and for the Northern District of New York, in chancery sitting:

Your orator, the National Albany Exchange Bank of Albany, in said district, respectfully represents,

That it is an incorporated banking association, incorporated
4 under and by virtue of an act of Congress, entitled "An act to provide for a national currency, secured by pledge of the United States bonds, and to provide for the circulation and redemption thereof," approved June 3d, 1864, and is established and doing business in the city of Albany, in said Northern District of New York, and brings this, its bill of complaint, against Charles A. Hills, receiver of taxes of the city of Albany, and Michael E. Higgins, a marshal of said city, both residents of said city of Albany and citizens of the State of New York.

And thereupon your orator complains and says that it has a

capital of three hundred thousand dollars divided into three thousand shares of one hundred dollars each, all of which is paid up and certificates of the shares outstanding and owned by a large number of persons, some of whom are now residents of said State of New York and citizens of other States, and most of whom are now residents of the Sixth ward of the city of Albany, in which ward your orator is located and doing business.

And your orator further says that under the laws of the State of New York, and particularly under an act to provide for the assessment and collection of taxes in the city of Albany, passed March 23d, 1850, and the amendments thereto, there is, and was throughout the year 1879, in the city of Albany, a board of assessors duly appointed for said city, and that the duty of said board of assessors was between the third Tuesday of April and first day of September in every year to ascertain by diligent inquiry the names of all the taxable inhabitants in the several wards of the said city, and also all the taxable property, real and personal, within the same. And it was the duty of the said board to prepare an assessment roll for each of the wards in the said city, in which they should set down in separate columns and according to the best information in their power: (1) In the first column, the names of all the said taxable inhabitants of the ward, and also the names of all other persons having real estate belonging to them in the ward. (2) In the second column, opposite the name of each such inhabitant or person, a brief and appropriate description of the real estate in the ward belonging to such person. (3) In the third column and opposite the description of each parcel of real estate the full value of such real estate; and (4) in the fourth column and opposite the name of each inhabitant of the ward, the full value of all the taxable personal property owned by such inhabitant after deducting the just debts owing by him and his property, invested in any stocks in any corporation or association liable to be taxed for such stock as capital or otherwise.

And that by said act it was also provided that if any person should at any time before the assessors should have completed their assessments, make affidavit that the value of the personal estate owned by him, after deducting his just debts and his property invested in the stock of any corporation or association liable to be taxed therefor, does not exceed a certain sum to be specified in the affidavit, it should be the duty of the board of assessors to value such personal estate at the sum specified in such affidavit and no more.

And your orator further says, that an act was passed by the Legislature of the State of New York on the 23d of April, 1866, entitled "An act authorizing the taxation of stockholders of banks and surplus funds of savings banks," whereby,

among other things, it was enacted that the stockholders in banks or banking associations organized under the authority of the said State of New York or of the United States, should be assessed and taxed on the value of their shares of stock therein; that said shares should be included in the valuation of the personal property of such stockholders in the assessment of taxes at the place, town or ward where such bank or banking association is located and not elsewhere, whether the said stockholders reside in said place, town or ward or not, but not at a greater rate than
10 is assessed upon other moneyed capital in the hands of individuals in said State. And it was further enacted in and by said act, that there should be kept at all times in the office, where the business of such bank or banking asociation, organized under the authority of said State of the United States, should be transacted, a full and correct list of the names and residences of all the stockholders therein, and of the number of shares held by each and that such list should be subject to the inspection of the officers authorized to assess taxes during the business hours of each day in which business may be legally transacted. And it was further enacted in and by said act, that when the owner of stock in any bank or banking association, organized under the laws of the said State or of the United States, should not
11 reside in the same place where the bank or banking association was located, that the collector and County Treasurer should respectively have the same powers as to collecting the tax to be assessed by the said act as they have by statute when the person assessed has removed from the town, ward or county in which the assessment was made, and that the County Treasurer, receiver of taxes, or other officer authorized to receive said tax from the collector, might all or either of them have an action to collect the tax from the avails of the sale of his shares of stock, and that the tax on the share or shares of the said stock should be and remain a lien thereon till the payment of said tax. And it was further enacted in and by said act, that for the pur-
12 pose of collecting such taxes and in addition to any other law of this State, not in conflict with the Constitution of the United States relative to the imposition of taxes, it should be the duty of every such bank or banking association and the managing officer or officers thereof, to retain so much of any dividend or dividends belonging to such stockholder as should be necessary to pay any taxes assessed in pursuance of said act until it should be made to appear to said officer that such taxes had been paid, as by reference to said act entitled as aforesaid, being chapter 761 of the Laws of the State of New York, passed in the year 1866, will more fully appear.

And your orator further says, that the said act, chapter
13 761 of the Laws of 1866, as construed by the courts of the State of New York, did not and does not permit of any

deduction from the valuation of said shares by reason of the indebtedness of the person owning the same, although such deduction was and still is, under and by virtue of the laws of the State of New York, allowed to persons assessed for any other moneyed capital than stock in banks or banking associations.

And your orator further charges that the said law, by reason of its prohibiting the deduction of the amount of the stockholder's indebtedness from the valuation of such shares in the State and National banks, while such deduction is allowed by the laws of the State of New York from the valuation of all other per-
14 sonal property, including moneyed capital, so far as it relates to shares in National banks, in conflict with section 5219 of the Revised Statutes of the United States, providing that the taxation of such shares in banking associations, organized under the laws of the United States, shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such State, and is therefore void as to the shares of banks organized under the laws of the United States, and has been so declared by the Supreme Court of the United States.

And your orator further says that the board of assessors of the city of Albany did, in the year 1879, acting under color of the said act (chap. 761 of the laws of 1866) assess the stock-
15 holders of your orator, in the Sixth ward of the city of Albany, in which your orator is now located, upon the value of their shares of stock in your orator, and that for the purpose of such assessment it assessed the value of said shares at one hundred dollars per share, being the par value thereof, deducting from such par value such sum as was in the same proportion to such par value as was the assessed value of the real estate of your orator, and in which any portion of your orator's capital was invested, to the whole amount of the capital stock of your orator, making the total assessment of the stockholders of your orator upon the shares owned by them respectively of such capital stock, after making such deduction as aforesaid, the sum of about two hundred and seventy thousand dollars.

16 And your orator further says that such assessment was intentionally and designedly made by such board of assessors at a greater rate than was assessed by said board upon other moneyed capital in the hands of individual citizens of the said State of New York, and that your orator had before such assessment repeatedly made objection to said board of assessors and protested against such assessment and claimed to said board that the said act (chapter 761 of the Laws of 1866) was unconstitutional and void so far as it authorized the assessment of shares of National banks, and claiming, further, that the said board of assessors in assessing the said shares of stock in your orator at par, making such deduction as aforesaid by reason of the real estate owned
17 by your orator, violated the laws of the United States, and especially the provision of section 5219 of the Revised

Statutes of the United States above referred to, by assessing such shares at a greater rate than was assessed upon other moneyed capital in the hands of individual citizens of said State.

And your orator further says that the said board of assessors had, for many years prior to the year 1879, insisted upon assessing the shares of stock in your orator at a greater rate than was assessed upon other moneyed capital in the hands of individual citizens of this State, although the attention of said board of assessors had been repeatedly called to the fact that they were thus violating the provisions of the laws of the United States. That there
18 was in the year 1879, and had been for many years before in the said Sixth ward of the city of Albany, a bank organized under the laws of the State of New York called "The Mechanics and Farmers' Bank." That the shares of said Mechanics and Farmers' Bank were of very much greater value than the shares of your orator; the value of each share of your orator being less than forty-two per cent of the value of each share of said Mechanics and Farmers' Bank. That the attention of the said board of assessors had been repeatedly called to the difference in value between the shares of said banks, respectively, and that so long ago as the year 1874 the said board of assessors had been brought before the Supreme Court of the State of New York upon a writ of *certiorari*,
19 and the fact of such difference in value of the shares of said banks respectively, had been clearly established and become well known to the said board of assessors; and the said Supreme Court had by its opinion, declared that the assessment made by the said board of assessors of said bank shares, by which the shares of your orator were valued at a much greator rate in proportion to their value than the shares of said State Bank was erroneous and inequitable and improper. But still the said board of assessors persisted in such mode of assessment and continued to and did in each and every year from and after 1874, to and including the year 1879, assess the shares of your orator at par and the shares of said State Banks at par, thereby assessing the
20 shares of your orator at a rate which said board of assessors well knew to be much greater than that at which it assessed the moneyed capital in the hands of individual citizens of said State, consisting of the shares in said State Bank, the greater part of which shares were in fact, held and owned by individual citizens of said State of New York.

And your orator further says upon information and belief that the said board of assessors did also assess in the year 1879, the stockholders in your orator, upon the shares of stock held by them respectively in your orator, at a greater rate than was assessed upon other moneyed capital in the hands of individual citizens of the said State, besides the said shares of said Mechanics and
21 Farmers' Bank. That there were in the city of Albany individual bankers doing business and having banks located

in said city, with a large amount of capital invested in banking business who were not assessed or taxed at all in said city. That there were in said city of Albany in the year 1879, a large number of corporations other than banks, owning personal property, but none of the shareholders therein were assessed or taxed on their shares in said corporations and that although some of said corporations were assessed and taxed, none of them were assessed or paid taxes on their entire capital, and that most of the holders of shares in said corporation were individual citizens of said State.

That there were in said city of Albany, in said year, several
22 corporations organized under a law of the State of New York, entitled "An act for the incorporation of building, mutual loan and accumulating associations, passed April 10, 1851," some of which had a large amount of money loaned on bond and mortgage, but the said corporations were not assessed or taxed at all upon said moneys or other personal property, nor were any of the shareholders or members of said corporations assessed or taxed on their shares or interests in said corporations or the property thereof, although the shares in such corporations were mostly held by individual citizens of said State of New York, and of said city of Albany. That real estate in said city was in said year assessed for purposes of taxation at not to exceed from forty to sixty per
23 cent of its estimated actual value.

And your orator further says, upon information and belief that, throughout the State of New York in the year 1879, moneyed capital, other than bank stock, was assessed for the purposes of taxation at a much less rate than that at which the shares in your orator were assessed as aforesaid, and that in many counties in the State the rate of assessment for taxation upon personal property, including moneyed capital, did not exceed one-third of the actual or market value thereof.

And your orator further says, that only a small portion of the shares of your orator, amounting in all only to about one hundred and ten of said shares, are or were, in 1879, owned by
24 inhabitants of the said Sixth ward of the city of Albany.

And your orator further says, that before the said board of assessors completed their assessments in the year 1879, one of the shareholders of your orator, owning five hundred and thirty-two shares therein, made affidavit that the value of the personal estate owned by him including said bank shares, after deducting his just debts and his property invested in stock of any corporation or association liable to be taxed therefor, and his investments in the obligations of the United States did not exceed one dollar, and presented the said affidavit to the said board of assessors and demanded of said board that they should value his personal estate, including said bank shares, at the sum of one dollar and no
24 more.

But the said board of assessors, acting under color of the

said law of 1866, as construed by the courts of the State of New York, refused to make such deduction, but valued the said shares at the sum of one hundred dollars each, making the deduction for real estate above mentioned required by said law, and making no other deduction.

And your orator further says, upon information and
26 belief, that other stockholders in your orator were indebted to an amount equal to or in excess of the personal property owned by them, respectively, including their shares of said stock, after deducting therefrom their property invested in the stock of corporations or associations liable to be taxed therefor, and their investments in the obligations of the United States, but that said shareholders omitted to make affidavit of such indebtness for the reason that it had been before decided by the Court of Appeals of said State, that under said law (chapter 761 of the Laws of 1866) no deduction could be made from the valuation of said shares for indebtedness, but that said shareholders would have made the necessary affidavit and applied for such deduction but for
27 such decision of the Court of Appeals, and the fact that they knew that such application would be denied by said board of assessors. And your orator says, upon information and belief, that in the year 1879 the shares of banks were the only kind of personal property which was assessed by special list separate from the other personal property of the owner or person assessed, and that bank shares were so assessed by special list, under color of said act (chapter 761 of the Laws of 1866), and that as to every kind of taxable personal property, other than bank stock, including moneyed capital, the owner or person assessed was in and by the laws of the State of New York, in the year 1879, allowed a deduction from the valuation thereof of the
28 amount of his indebtedness, but no such deduction was allowed or permitted to the owners of bank stock from the valuation thereof.

And your orator further says, upon information and belief, that the said assessments were completed, containing the said assessments of the stockholders of your orator upon their shares of the capital stock of your orator, and the assessment roll, certified by the board of assessors, as required by law, was, as your orator is informed and believes, delivered by the said board of assessors to the Supervisor of the Sixth ward of the city of Albany, who delivered the same to the Board of Supervisors of the county of Albany at their next meeting, as required by the act to pro-
29 vide for the assessment and collection of taxes in the city of Albany, above mentioned. And the Supervisors of the county of Albany thereupon assessed the taxes to be raised on real and personal estate, and annexed to the names of the shareholders in your orator, upon the assessment roll, on account of the said assessment upon said shares, a tax amounting in the aggregate to

about $7,655, and delivered said assessment roll to the above named Charles A. Hills, Receiver of Taxes of the city of Albany, on or about the 15th day of December, 1879, having first annexed thereto their warrant under the hands and seals of the Board of Supervisors, in pursuance of the act last mentioned, commanding such receiver to collect from the several persons named in
30 said assessment roll the amount of the tax therein mentioned, and to pay over the same in the manner directed in the said warrant. That the said Receiver of Taxes afterwards, in pursuance of the said last mentioned act, having published the notices and waited the time required by said act, issued his warrant under his hand and seal to the above named Michael E. Higgins, marshal of said city of Albany, commanding him to levy the tax, with interest on the same at the rate of twelve per cent per annum, to be calculated from the first day of February preceding, by distress and sale of the goods and chattels of the person upon whose real or personal estate the said tax was apportioned according to the said assessment and tax rolls, or of any goods or chattels in
31 possession, wheresoever the same should be found within the city and county of Albany, and to pay the same to the said receiver and to return said warrant within thirty days after the date thereof.

And your orator further says that the said taxes so assessed against the stockholders in your orator remain wholly or almost wholly unpaid. That heretofore most of said share holders have paid into your orator the amount claimed by the Receiver of Taxes of the city of Albany as being the sum due for the tax of 1879 on the shares of stock in your orator or held by them respectively; for which sum your orator executed to said stockholders respectively its receipt whereby it accepted the said sum for the purpose of paying said tax, if the same should be enforced, under due protest, and the said sums so paid to your orator have been retained by your orator as a part of the
32 dividends belonging to said stockholders respectively, which are required to be retained by your orator, until the payment of taxes against said shareholders by the provision of said law, said chapter 761 of the laws of 1866. But that since the said law of the State of New York last mentioned has been decided by the Supreme Court of the United States to be in violation of the laws of the United States, as above set forth, and void as to the assessments of shares of National banking associations, many of said shareholders have given notice to your orator forbidding your orator to pay such tax, upon the ground that it was not lawfully assessed against them, and revoking and countermanding any prior power or authority given to your orator or its officers to pay such tax, and have demanded from your orator the sums so paid in by them respectively to your orator for the
33 purpose aforesaid, and denied the right of your orator to

retain said moneys, or to retain any part of the dividend or dividends belonging to them respectively, until the payment of such taxes, and have instructed and requested your orator to resist the payment of such taxes as illegal and unauthorized and to take such legal means as may be necessary to prevent the collection thereof. And your orator further says upon information and belief, that there is no law of the State of New York authorizing the assessment of any persons for personal property at any other place than the town or ward of which such person may be a taxable inhabitant, except the above mentioned law, chapter 761 of the laws of 1866, but that under the laws of the State of New
34 York all residents therein are to be assessed upon their personal property for purposes of taxation in the town or ward where they may reside and not elsewhere. Your orator therefore avers and insists that the taxes so assessed against its shareholders, on account of their shares of stock therein, are unjust, illegal and void for the following among other reasons to wit:

First. The law under the color of which such taxes were so assessed by the board of assessors of the city of Albany, viz., the act chapter 761 of the laws of 1866 above mentioned is in conflict with the provisions of the laws of the United States, and especially in conflict with the provisions of section 5219 of the Revised Statutes of the United States, which provides that the taxation of
35 such shares shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such State, and is therefore void so far as it authorized or purports to authorize the assessment for purposes of taxation of shares in banking associations organized under the laws of the United States.

Second. The property of said shareholders in this corporation is not valued and taxed the same as the property of individual citizens of the State of New York, and the burden of taxation upon such property of said shareholders is very much greater than that upon other property and moneyed capital, nor has any equality been preserved in the valuation of said shares for taxation compared with other property in the locality where the bank of
36 your orator is located; on the contrary the valuation in proportion to the market value is nearly three times as much as that at which other moneyed capital in the hands of individual citizens in the State of New York is assessed, while the rate of levy or the per centage of such valuation at which the tax thereon is levied is the same.

Third. The board of assessors of the city of Albany have not endeavored to conform to the provision of section 5219 of the Revised Statutes of the United States above referred to, but have deliberately and intentionally assessed, for purposes of taxation, the shares in the capital stock of your orator, in the hands
37 of the holders thereof at a much greater rate than they

have assessed other moneyed capital in the hands of individual citizens in the State of New York.

38 And your orator further says that the above-named Michael E. Higgins, as marshal of the city of Albany, accompanied by the above-named Charles A. Hills, as receiver of taxes of said city, has appeared at the banking-house of your orator, having the warrant issued to said marshal by said receiver of taxes as aforesaid, and has demanded payment of the said taxes amounting, with interest and expenses, to about eight thousand eight hundred dollars, and the said Higgins, as such marshal, under and in pursuance of said warrant, threatens to and will, unless restrained by the injunction of this honorable court, immediately proceed to enforce the collection of the said taxes either by seizing the goods and chattels of said shareholders or by seizing the

39 moneys belonging to the said shareholders in the hands of your orator, or by selling the shares of stock owned by said shareholders respectively, or by action to collect such taxes from the avails of the sale of said shares pursuant to said chapter 761 of the Laws of 1866.

And your orator further represents that if the said Charles A. Hills, as receiver of taxes, or the said Michael E. Higgins, marshal of said city of Albany, are permitted to enforce the collection of said taxes, either under the warrant aforesaid, or by sale of the said shares, or a levy on the goods and chattels of said shareholders, or on the moneys belonging to them in the hands of your orator, or by action pursuant to said law chapter 761 of Laws of 1866, or

40 otherwise, irreparable injury would not only be done to each of said shareholders but also to your orator, your orator would be thereby subjected to great loss of standing and credit and other injuries for the redress of which the law affords no remedies, and the franchises with which your orator is invested by the act of congress aforesaid would not only be greatly impaired in value but, if such illegal exactions are to continue and be persisted in, would be rendered comparatively useless; that the obligation attempted to be imposed upon your orator by the provision of said law, chapter 761 of 1866, requiring your orator to retain so much of any dividend or dividends belonging to such stockholder as should be necessary to pay any taxes assessed in pursuance of said act

41 until it should be made to appear to the officers of your orator that such taxes have been paid would, if obeyed, damage all the ordinary business of the bank and introduce confusion and uncertainty into its transactions and a consequent loss of public confidence upon which its success depends, or, if your orator should pay said illegal taxes with the money in its hands belonging to said shareholders, retained by your orator for that purpose, which many of said shareholders have already prohibited its doing, your orator would be subjected to a great multiplicity of suits brought by its separate shareholders for so doing, and, in any event,

a great number of suits would be rendered necessary to adjust the rights of all the parties, and your orator would be subjected
42 to great expense and irreparable injury thereby.

Inasmuch, therefore, as your orator is remediless by the strict rules of the common law, and relievable only in equity, it prays that the said Charles A. Hills, receiver of taxes of the said city of Albany, and the said Michael E. Higgins, marshal of the city of Albany, may be made parties defendant to this your orator's bill of complaint; that the writ of subpœna may issue against them, and that they may answer the premises.

That your honors will grant unto your orator your writ of injunction, strictly restraining and enjoining during the pendency of this suit the said Charles A. Hills, receiver of taxes as aforesaid, and the said Michael E. Higgins, marshal of the city of
43 Albany as aforesaid, their servants, agents or subordinates, from collecting or attempting to collect from your orator or from said individual shareholders, by levy under said warrant, distraint, action or otherwise, any of the said taxes so assessed as aforesaid, and that upon a final hearing hereof the said defendants may be perpetually enjoined from collecting the said taxes so illegally assessed, or any of them, and that your orator may have in the premises such other or such further relief as may to this honorable court may seem meet and agreeable to equity, together with its costs in this behalf sustained.

HAND & HALE,
Attorneys for Complainant,
44 25 North Pearl street, Albany, N. Y.

MATTHEW HALE,
Of Counsel.

UNITED STATES OF AMERICA, }
NORTHERN DISTRICT OF NEW YORK, } *ss.:*

Chauncey P. Williams being duly sworn says that he is President of the National Albany Exchange Bank, the complainant in the foregoing bill named, and has read the same and knows the contents thereof, and that the said bill is true of his own knowledge, except as to those matters which are therein stated to be alleged on information and belief, and as to those matters he believes it to be true.

45 C. P. WILLIAMS.

Sworn to before me this 13th }
day of May, 1880. }

W. FROTHINGHAM,
United States Circuit Court Commissioner.

(Endorsed:) No. 2,848. United States Circuit Court, Northern District of New York. In equity. The National Albany Exchange Bank against Charles A. Hills, Receiver of Taxes, and

Michael E. Higgins, Marshal of the city of Albany. Copy bill of complaint. Hand & Hale, attorneys for complainant, 25 North Pearl street, Albany, N. Y. Filed May 14, 1880.

The President of the United States of America to Charles
46 A. Hills, Receiver of Taxes, and Michael E. Higgins, Marshal of the city of Albany, greeting:

You are hereby commanded that you personally appear before the Judge of the Circuit Court of the United States for the Northern District of New York, in the second circuit, on the first Monday in June, 1880, to answer a bill of complaint exhibited against you in said court by the National Albany Exchange Bank, and to do further, and receive whatever said court shall have considered in that behalf, and this you are not to omit under the penalty of two hundred and fifty dollars.

Witness, the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at the city of Utica,
[L. S.] in said Northern District, the 14th day of May, eighteen hundred and eighty.

47 W. H. BRIGHT, *Clerk.*

HAND & HALE,
Solicitors for Complainant.

(Memorandum:) The defendant is to enter his appearance in the suit above mentioned in the clerk's office at Utica, on or before the day at which the above subpœna is returnable; otherwise the bill may be taken *pro confesso.*

WILLIAM H. BRIGHT, *Clerk.*

(Endorsed:) I certify that on the 24th day of May, 1880, at Albany, in my district, I personally served the within writ
48 on the within named Charles A. Hills, Receiver of Taxes, and on the within named Michael E. Higgins, Marshal, by showing to them the same, with the seal of the court thereon, and delivering to and leaving with them and each of them a copy thereof. Dated Albany, May 24, 1880. C. D. MacDougal, U. S. Marshal. By Jas. H. Kelley, Deputy. Service on J., $4; travel to and return, ninety-five miles, $5.70; total, $9.70. Fees paid by complainant's solicitors. Filed May 26, 1880.

49 IN THE UNITED STATES CIRCUIT COURT.

NORTHERN DISTRICT OF NEW YORK.

THE NATIONAL ALBANY EXCHANGE BANK
against
CHARLES A. HILLS, Receiver of Taxes, and MICHAEL E. HIGGINS, Marshal of the City of Albany. } In Equity.

The answer of defendants to the bill of complaint of the above plaintiff:

I. Denies that the act of 1866 of the State of New York
50 in regard to the taxation of National banks, is void.

II. And on information and belief they deny that the assessment made by the assessors upon the stockholders in said corporation plaintiff was intentionally or designedly made by said assessors at a greater rate than was assessed by said assessors upon other moneyed capital in the hands of individual citizens of the State of New York.

III. They deny any knowledge or information sufficient to form a belief as to what had been the custom or conduct of the assessors in assessing stock of the corporation plaintiff belonging to individuals, or as to whether they, said assessors, had ever violated the law in regard to such assessment, or in regard particularly
51 to the assessment for 1879. And they deny any knowledge or information sufficient to form a belief as to the assessment upon the shares of corporation plaintiff for 1879, or as to the rate thereof, whether it was greater than upon other moneyed capital in the hands of individuals or not.

IV. They deny any knowledge or information sufficient to form a belief as to the manner, amount or rate in or at which other corporations were assessed by said assessors in 1879, or as to the allegations regarding building, mutual loan and accumulating fund societies, or the amount of moneys (if any) loaned on bond and mortgage by them, or as to whether they were or were not assessed or taxed upon such moneys or other personal property, or
52 as to whether the members of the said societies were assessed or taxed on their shares or interests therein, or as to whether such shares were mostly held by citizens of the State, and of the city of Albany.

And they deny like information or knowledge as to the existence of any private bankers in the city of Albany, or their exemption from taxation, as alleged in the complaint.

V. They deny any knowledge or information sufficient to form a belief as to the rate at which moneyed capital other than bank stock was assessed for purposes of taxation through the State of New York, or that in many counties of the State the rate of

assessment for taxation upon personal property did not
53 exceed one-third of the actual or market value thereof.

VI. They further deny any knowledge or information sufficient to form a belief as to the indebtedness of other stockholders in corporation plaintiff, other than the one who made the affidavit and demand set forth in the complaint herein, or their reasons for omitting themselves to make any affidavit or demand similar to the one that was made, or whether or not they would have done so in case they had thought it would have been successful.

VII. Defendants further deny any knowledge or information sufficient to form a belief as to the custom heretofore of the stockholders of the corporation plaintiff in regard to paying in to it the amount claimed by the receiver of taxes from such
54 stockholders, or as to what, if any, receipts therefor were executed by the corporation plaintiff, or as to the conditions on which it accepted such payments, or as to what many of the stockholders have done since, as is alleged, the law of 1866 has been pronounced void by the Supreme Court of the United States in regard to countermanding any authority theretofore given the corporation plaintiff to pay the tax or retain the amount thereof, or whether any such stockholders have demanded such or any sums from the corporation plaintiff, or what instructions or requests they have given or made in the premises. And they deny that the taxes alluded to in the complaint are unjust, illegal or void.

55 VIII. Defendants deny that any irreparable or other injury would ensue to the plaintiff if defendants are permitted to enforce the collection of the tax against the stockholders of corporation plaintiff in any way known to the law. And they deny that the corporation plaintiff would be in any way subjected to any loss of standing or credit thereby; and they deny that plaintiff's franchises would be the least impaired in value for any such reason.

And they deny that any damage whatever would come
56 to plaintiff from obeying the statute, chapter 761 of the Laws of 1866, by retaining so much of any dividend as is therein provided until it should appear that the stockholder to whom it belonged had paid his tax.

And they deny that a multiplicity of suits would or properly could result from paying, by the plaintiff, the taxes aforesaid assessed against the several stockholders of said corporation plaintiff.

Second. Defendants, further answering the complaint of the plaintiff, allege that no tender or offer has been made to either defendant by plaintiff, or by any stockholder in corporation plaintiff, to pay the amount of the tax assessed against said stockholders by reason of their ownership of such stock, or to pay any
57 part or portion of such tax.

And that defendant Hills is the person to whom, by law, all taxes are to be paid in the city of Albany.

R. W. PECKHAM,
Attorney for Defendants,
Albany Savings Bank Building, Albany, N. Y.

UNITED STATES OF AMERICA, } *ss.:*
NORTHERN DISTRICT OF NEW YORK. }

Charles A. Hills, being duly sworn, says that he is the receiver of taxes of the city of Albany, and one of the defendants herein. That he has read the foregoing answer and knows the contents thereof, and that the same is true of his own knowledge,
58 except as to the matters therein stated on information and belief, and as to those matters he verily believes it to be true, and that defendants are united in interest.

CHAS. A. HILLS.

Subscribed and sworn to before me, }
this 22d day of July, 1880. }

W. FROTHINGHAM,
United States Circuit Court Commissioner.

(Endorsed:) 2848. United States Circuit Court, Northern District of New York. The National Albany Exchange Bank against Charles A. Hills, receiver of taxes et al. Copy answer. R. W. Peckham, attorney for defendants, Albany, N. Y. U. S. Cir-
59 cuit Court, N. D. of N. Y. Filed Dec. 6th, 1880. William H. Bright, clerk.

UNITED STATES CIRCUIT COURT.

NORTHERN DISTRICT OF NEW YORK.

THE NATIONAL ALBANY EXCHANGE BANK
against
CHARLES A. HILLS, Receiver of Taxes, and MICHAEL E. HIGGINS, Marshal of the City of Albany. } *In Equity.*

The application of the National Albany Exchange Bank, complainant, to the answer of Charles A. Hills, Receiver of Taxes, et al., defendants.

60 This repliant saving and reserving unto himself now and at all times hereafter, all and all manner of benefit and advantage of exceptions which may be had or taken to the manifold insufficiences of the said answer, for replication thereunto says that he will aver, maintain and prove his said bill of complaint to be true, certain and sufficient in law to be answered unto, and that

the said answer of the said defendants is uncertain, untrue and insufficient to be replied unto by this repliant.

Without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied is true. All which matters and things this repliant is and will be ready to aver, maintain and prove as this honorable court shall direct, and humbly prays as in and by his said bill he has already prayed.

61 HAND & HALE,
Complainant's Solicitors,
No. 25 North Pearl st., Albany, N. Y.

(Endorsed:) No. 2848. United States Circuit Court, Northern District of New York. In Equity. The National Albany Exchange Bank against Charles A. Hills, Receiver of Taxes, et al. Copy replication of complainant to answer of defendants.

HAND & HALE,
Attorneys for Plaintiff,
25 North Pearl st., Albany, N. Y.

Filed December 2, 1880.

Due and personal service of a copy of the within is admitted, this 3d day of November, 1880.

R. W. PECKHAM,
Defendants' Attorney.

At a Special Term of the Circuit Court of the United
62 States of America, for the Northern District of New York, in the Second Circuit, held at the Chambers of Judge Wallace, in the city of Syracuse, on the 6th day of November, 1880.

Present — Hon. William J. Wallace, District Judge.

THE NATIONAL ALBANY EXCHANGE BANK, Complainant,
against
CHARLES A. HILLS, Receiver of Taxes, and MICHAEL A. HIGGINS, Marshal of the City of Albany. } Decree.

This cause came on to be heard at this term and was
63 argued by counsel, and thereupon upon consideration thereof it was ordered, adjudged and decreed, and this court, by virtue of the power and authority therein vested, doth order and adjudge and decree as follows viz.: That the act of the Legislature of the State of New York, entitled "An act authorizing the taxation of stockholders of banks and surplus funds of savings banks," passed April 23d, 1866, referred to in the bill of complaint herein is void and inoperative as to shares of stock in

National banking associations, and that the assessment or taxation of the stockholders of complainant upon their shares of stock in complainant set forth in the said bill of complaint were and are illegal and void.

64 And it is further ordered, adjudged and decreed that the defendants, Charles A. Hills, receiver of taxes, and Michael E. Higgins, marshal of the city of Albany, their and each of their successors, servants, agents or subordinates, be and they hereby are strictly commanded and perpetually enjoined that they and each of them do absolutely desist and refrain from collecting or attempting to collect from the said the National Albany Exchange Bank, complainant, or from the stockholders of said bank, or any of them by levy, distraint, seizure of property, action or otherwise any of the taxes assessed in the year 1879 against said stockholders, or any of them, upon their respective shares of stock in said bank, for the collection of which the defendant Charles A. Hills,

65 receiver of taxes, has issued his warrant to the defendant Michael E. Higgins, as marshal, as aforesaid, as alleged in the bill of complaint herein.

And it is further ordered, adjudged and decreed that the said defendants pay to the said complainant his costs in this suit to be taxed, and that the said complainant have execution for such costs.

WM. J. WALLACE.

(Endorsed:) No. 2848. United States Circuit Court, Northern District of New York. The National Albany Exchange Bank against Charles A. Hills, receiver of taxes, and Michael E. Higgins, marshal of the city Albany. Copy of decree. Hand, Hale & Bulkley, for complainant, 25 North Pearl street, Albany, N. Y. Filed December 8, 1880.

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66 UNITED STATES CIRCUIT COURT.

NORTHERN DISTRICT OF NEW YORK.

THE NATIONAL ALBANY EXCHANGE BANK *against* CHARLES A. HILLS, Receiver of Taxes, and another. } Costs.

Docket fee	$20 00
William J. Weaver, deposition	2 50
William J. Weaver, witness fee	1 50
Chauncey P. Williams, deposition	2 50
Chauncey P. Williams, witness fee	1 50
67 Henry C. Peck, deposition	2 50
Henry C. Peck, witness fee	1 50
Francis Vail, deposition	2 50

Francis Vail, witness fee			$1 50
James McKaughton, deposition			2 50
James McKaughton, witness fee			1 50
Edward A. Durant, deposition			2 50
Edward A. Durant, witness fee			1 50
Marshal's fees			9 70
Printing testimony			30 15
Examiner's fees			30 02
Printing points			21 00
68 Copy of opinion of Wallace, J.			3 00
Clerk's fees to date			10 55
Clerk's fees to be incurred:			
Enrolling Decree	$12 00		
Filing decree	25		
Docketing judgment	15		
Transcript	45		
Injunction, issuing of and entering return	1 60		
Execution	1 60		
			16 05
Total			$164 47

69

Taxed at $164.47, this 11th day of November, 1880.

W. H. BRIGHT,
Clerk.

I hereby consent to the taxation of the above costs at $164.47.

R. W. PECKHAM,
Defendants' Attorney.

Dated December 10, 1880.

(Endorsed:) United States Circuit Court, Northern District of New York. The National Albany Exchange Bank against Charles A. Hills, Receiver of Taxes et al. Copy of plaintiff's costs. Hand, Hale & Bulkley, Plaintiff's Attorneys, 25 North Pearl street, Albany, N. Y. Filed December 11, 1880.

70 Whereupon the costs of the complainant having been taxed at the sum of $164.47, the said pleadings, process and final decree, together with other papers in said cause, are duly annexed thereto, and this decree is duly signed and enrolled, pursuant to the rules and practice of this court, this 11th day of December, A. D. 1880.

W. H. BRIGHT,
Clerk.

(Endorsed:) No. 2848. United States Circuit Court, Northern District of New York. The National Albany Exchange Bank

against Charles A. Hills, as receiver of taxes, and Michael E. Higgins, as marshal of the city of Albany. Copy enrolled decree.
71 Hand & Hale, complainant's solicitor. Costs $164.47. Filed December 11, 1880.

UNITED STATES CIRCUIT COURT.

NORTHERN DISTRICT OF NEW YORK.

THE NATIONAL ALBANY EXCHANGE BANK
against
CHARLES A. HILLS ET AL.

It is admitted as part of the evidence for defendants in above action that the plaintiff never paid or offered to pay to the receiver of taxes or collector, or to anyone in their behalf, any portion of the amount of taxes assessed against the shareholders of
72 plaintiff for the tax for 1879, the collection of which plaintiff seeks herein to enjoin.

M. HALE,
Of Counsel for Plaintiff.
R. W. PECKHAM,
Of Counsel for Defendants.

(Endorsed:) No. 2848. United States Circuit Court, Northern District of New York. The National Albany Exchange Bank against Charles A. Hills et al. Stipulation. Filed December 2, 1880.

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74 UNITED STATES CIRCUIT COURT.

NORTHERN DISTRICT OF NEW YORK.

THE NATIONAL ALBANY EXCHANGE BANK
against
CHARLES A. HILLS, Receiver of Taxes, and MICHAEL E. HIGGINS, Marshal of the City of Albany. — In Equity.

October 4, 1880, 10 A. M. Testimony taken on the part of the complainants on this day, under the sixty-seventh
75 rule of practice for the courts of equity of the United States, by William Lansing, examiner in equity.

Present — Hon. Matthew Hale, counsel for the complainant; Hon. Rufus W. Peckham, counsel for defendants.

The incorporation of the complainant is admitted as stated in the bill of complaint; also the allegation as to that amount and division of the shares of the capital stock of the complainant.

Any law of Congress or of the State of New York relating to the subject-matter of the suit may be referred to as if introduced in evidence therein; also any reported judicial decision.

76 WIELIAM J. WEAVER being duly called, sworn and examined as a witness on the part of the complainant and examined by Hon. Matthew Hale, of counsel for complainant, deposes as follows: I am one of the assessors of the city of Albany, and have been such since 1871, continually; I have with me here a copy of the assessment roll of the Sixth ward of the city of Albany for the year 1879, the field book; that is a copy; the stockholders of the complainant were assessed for that year upon that roll in that year at the par value of the shares, making the deduction for the assessed value of the real estate of the bank; the stockholders of the Mechanics and Farmers' Bank of Albany, were also assessed upon that roll for that year, and also at the

77 par value of the shares, making a like deduction; all the stockholders of the seven other banks situated in the Sixth ward of the city of Albany, nine in all, were assessed upon that roll in like manner and also at the par value of their shares, making a like deduction for the value of real estate, these assessments included the stockholders of all the banks in the city of Albany; of these nine banks I understand all but two to be National banks, the two State banks being the Mechanics and Farmers and Albany County banks; in making these assessments we made no special inquiry as to the actual value of the shares, except that we ascertained that they were worth as much as par; I was a party to certain *certiorari* proceedings instituted in

78 1874, in favor of Chauncey P. Williams; ever since I have been an assessor bank stock has been assessed in the city of Albany in the same manner I have stated, viz.: at its par value, less the assessed value of the real estate of the bank. Q. Had you information before 1879, that the value of the shares in the Mechanics and Farmers' Bank was much greater than that of the shares in the complainant's bank? A. To answer that question strictly it must be somewhat modified; I had reason to believe it was greater. Q. Were you not informed as early as 1874, that the value of a share in the complainant's bank was less than forty-two per cent of the value of a share of the Mechanics and Farmers' Bank? A. I really don't recollect that it

79 was, I had some information but I don't recollect that. Q. You were also a defendant in a suit brought by Chauncey P. Williams in 1875, which went to the Supreme Court of the United States? A. Yes, sir. Q. Did you know of individual bankers doing business and located in the south part of the city of Albany, prior to and on September 1, 1879? A. I knew of none that I thought liable to tax under the law. Q. Did you know that Henry R. Pierson and Evert Evertson and Chauncey S. Titus and Robinson & Co., were doing business at the time

referred to in the said Sixth ward as bankers? A. I supposed their business to be that of brokers and not that of bankers.

Q. Neither of those gentlemen were assessed in 1879,
80 as individual bankers? A. They were not assessed in that year as individual bankers, nor did they make any declaration upon oath as to the amount of capital invested in their business before us, the assessors. Q. Were any of the corporations called Building Mutual Loan and Circulating Fund Associations assessed by your board for taxation in 1879? A. They were not; in this we acted under the advice of the Attorney-General of the State of New York. Q. Have you with you any statements made to your board by insurance companies in 1879, and what insurance companies? A. Yes, sir; the Commerce Insurance Company of the city of Albany, the Mutual Insurance Company of that city, and the Albany Insurance Company; the title of the Mutual Company is the Mutual Insurance Company of the city and county of Albany.

Witness produces statements of the Commerce and Albany
81 Insurance companies referred to.

Copies of the statements put in evidence and marked complainant's Exhibits A and B; Commerce's statement as A and Albany as B.

Q. What was the personal assessment of the Commerce Company in 1879, and how much was that of the Albany in that year? A. The Commerce assessment in that year was $1,200; that of the Albany $13,000. Q. Will you explain why these companies were assessed so much less than the balance appearing on their statements? (Objected to by defendants' counsel as immaterial and incompetent.) A. Because for the purpose of drawing manufacturing companies to Albany we assessed them upon twenty-five per cent of their taxable property, and in order to make uniformity among business corporations we adopted the same rule in regard to insurance companies.

Witness also produces the statement of Schuyler's steam
82 tow-boat line of 1879, made to the assessors in 1879, showing its capital stock at $100,000, its liabilities at $80,000. This company was assessed at $5,000.

Q. Was that course pursued by the assessors in regard to all the manufacturing companies in the city of Albany? A. Yes, sir; they were assessed upon twenty-five per cent of the amount that we deemed them liable to be taxed upon; we were not always governed by their statements as to this account. Q. At what rate was real estate assessed in the city of Albany in 1879? (Objected to by defendant's counsel as immaterial and incompetent.) A. The rule adopted by the assessors was to assess real property at sixty per cent upon the amount it would cost to duplicate it, and that rule was adopted and acted upon. Q. Did Mr. Chauncey P. Williams present to your board in 1879, the affidavit which you

83 now produce, and request you to reduce his assessment for personal property including bank stock to the sum of one dollar? A. The affidavit was presented, but whether a request of that kind was made or not I don't know; it was not presented to me; it was presented and put upon file. (Copy affidavit last mentioned, introduced in evidence and marked complainant Exhibit C.) Q. His assessment on bank stock was not reduced was it? A. No, sir. Q. Why was it not reduced? A. Because we acted under the decision of the Court of Appeals, which held that there was to be no reduction allowable for indebtedness on assessments of bank stock.

Direct-examination by the witness, William J. Weaver,
84 here closed.

WM. J. WEAVER.

Sworn to and subscribed before me,
this 4th day of October, 1880.

WILLIAM LANSING,
Examiner.

On his cross-examination by Hon. Rufus W. Peckham of counsel for the defendants, the witness, William J. Weaver, further testified as follows:

Q. 1. Was the assessment made upon the stockholders of the complainant's bank made intentionally at a greater rate than that upon other moneyed capital in the hands of individual
85 citizens? (Objected to as immaterial and incompetent, and as calling for the conclusion of the witness and not for facts.) A. No, Sir. Q. 2. You understood that the value of the stock in the complainant's bank was considerably over par, did you not, was that your general impression? A. It was. Q. 3. In making assessments upon bank stock in this city, was there any intention to discriminate against the holders of that kind of property for the purpose of taxation. (Objected to same as last above.) A. There was not. Q. 4. In this system of valuation adopted by you for purposes of taxation, was it intended by you to operate unequally or unjustly towards the holders of bank stock. (Objected to same as last above.) A. It was not so
86 intended. Q. 5. You say you did not assess Messrs. Everts-son and others, as bankers, in 1879, did you believe that they were individual bankers within the meaning of the statute upon the subject of taxation? (Objected to as immaterial and incompetent.) A. We did not assess them, and we did not believe that they were the individual bankers within the meaning of the statute requiring us to assess them. Q. 6. Had you before this time investigated into the character of their business? (Same objection as last above.) A. We had. Q. 7. And had come to this conclusion after such investigation? (Same objection as last made.) A. Yes, sir; we had. Q. 8. In making

the assessment of the bank shares at par, what was your understanding in relation to its being satisfactory to the owners of bank shares here in the city banks, excepting to Mr. Williams
87 and the shareholders of complainant's bank? (Objected to as immaterial and incompetent by complainant's counsel.) A. I never heard of any exception being made to that manner of assessing bank shares, excepting on the part of Mr. Williams, and the shareholders generally were satisfied with that method of assessing. Q. 9. In relation to the manner of assessing had you had heretofore talked with bank officers in the city as to whether this method of assessing was satisfactory generally? (Same objection as last made.) A. We had talked with them but never consulted them.

Cross-examination of the witness William J. Weaver here
88 closed.

WM. J. WEAVER.

Sworn to and subscribed before me this 4th day of October, 1880.

WILLIAM LANSING,
Examiner.

On his re-direct examination by Hon. Matthew Hale, of counsel for complainant, the witness William J. Weaver further deposed as follows:

Q. 1. Did you read the opinion of the General Term of the New York Supreme Court given in the *certiorari* proceedings above referred to? A. I did not. Q. 2. Were you not informed
89 that in that case one of the judges who wrote opinions characterized the course of the assessors in this city in assessing all bank stock at par regardless of actual value whenever it exceeded par as a palpable violation of the laws of the State on the subject? A. I don't know how I came by that information, but I had it. Q. 3. Were you not also informed that in the case of Williams against yourself and others, the Court of Appeals, in its opinion, considered your mode of assessment of bank stock as erroneous, and stated that its effect necessarily must be to make great inequality and impose upon the shareholders of complainant a greater burden of taxation than that which would properly belong to them? A. That is briefly answered by saying I was not so informed; I never read that opinion. Q. 4. With what stockholders of banks in Albany have you conversed on the subject of taxation? A. It would be difficult to specify, and yet I might name some;
90 Mr. Wendell, vice president of the Merchants' Bank, Mr. Garret Van Allen, vice-president of the First National Bank, and Adam Van Allen, cashier of the last named bank, Mr. Templeton, cashier, I believe he is, of the Albany County Bank, Mr. Thomas W. Olcott, since deceased, president of the Mechan-

ies and Farmers' Bank, Mr. Robert H. Pruyn, president of the National Commercial Bank, Mr. Billings P. Learned, president of the Union National Bank; I have conversed with stockholders of the New York State National Bank. Q. 5. Of those you have conversed with, whom can you specify as having affirmatively expressed approval of your system of assessing bank stock? A. That is very difficult to answer, of course you want a direct
91 answer; I don't really remember of any individual who has spoken affirmatively in approval of our system.

Redirect-examination of the witness William J. Weaver here closed.

WM. J. WEAVER.

Sworn to and subscribed before me this 4th day of October, 1880.

WILLIAM LANSING,
Examiner.

The complainant offers in evidence the return of the assessors to the writ of *certiorari* above referred to, as it appears in the printed papers used on motion for injunction in this cause,
92 at pages 21 to 30. It is agreed that either party may refer to it upon the argument.

Recess to 4 P. M., October 4th.

OCTOBER 4th, 4 P. M.

CHAUNCEY P. WILLIAMS being called and sworn as a witness for the complainant, and examined by Hon. Matthew Hale, of counsel for complainant, deposed as follows:

I am the President of the complainant; have been such since 1874 or 1875; prior to that time I was cashier of the complainant, and had been since 1861; the number of stockholders in September, 1879, was between ninety and one hundred; the number of shares is three thousand; about one hundred of those shares, September 1, 1879, were held by parties who resided in the Sixth ward of Albany; one hundred and three shares of that time were held by non-residents of the State of New York; five hundred and seventy-one shares were held by persons residing within the
93 State, but outside of the city of Albany; the balance were held by citizens of Albany not residents of the Sixth ward. Q. Did you, in September, 1879, present to the Board of Assessors of the city of Albany the affidavit (marked complainant's exhibit C), which was produced by Mr. Weaver here this morning, at their office in the City Building? A. I did. Q. Did you at that time make any demand, and if so, what? A. I made a demand for a reduction of my assessment upon bank shares to one dollar; they refused to comply with the demand. Q. What was the number of shares that you were assessed for? A. Five hun-

dred and thirty-two shares, and the amount assessed was $478.80.
Q. Have you a general knowledge of the market value of
94 shares of bank stock in this city? A. Yes, sir. Q. On the 1st of September, 1879, what was the market value of the shares in complainant's bank? A. I think at that period, the sales I knew about at that period, from one hundred and twenty-five to one hundred and thirty. Q. Same question as to shares in the Mechanics and Farmers' Bank? A. About three hundred, so far as I heard; as much as two hundred and eighty-five. Q. Same question as to the Commercial National Bank? A. Say from two hundred and sixty to two hundred and seventy-five.
Q. Same question as to Merchants' National Bank. A.
95 Somewhere about 200, or a little over 210. Q. Have you here copies of statements made by the Mechanics and Farmers' Bank, the Commercial National Bank and the Merchants' National Bank? A. Yes, sir; the statements made to the comptroller of the currency at Washington by the National bank, and to the bank department at Albany by the State bank, dated the 14th of June, 1879. (Said statement received in evidence and marked complainant's Exhibits D, E, F and G. Defendant's counsel objects to the statements as evidence as immaterial and incompetent.) Q. Has the relative, actual and market value of the shares in the complainant's bank and in the Mechanics and Farmers' Bank been about the same as now since 1873? A. Nearly so I should
96 think; the relative value. Q. State whether the shareholders of the complainant paid to the complainant the amount of tax assessed upon their respective shares as claimed by the receiver of taxes? A. Most of the shareholders did or allowed it to be retained from their January dividend; I think all but the holders of about fifty shares. Q. And was a receipt given to them by the cashier of which this that I have here is the form? A. Yes, sir; this was the blank that was used and filled up; it is a receipt for tax levied under State authority for 1879 to be paid under proper protest. Q. You were the moving party in the *certiorari* proceedings above referred to in 1874, and also the relator in *mandamus* proceedings instituted in 1875, and the plain-
97 tiff in the action brought against the assessor individually above referred to? A. Yes, sir. Q. The two last named proceedings went to the Supreme Court of the United States? A. Yes, sir, and were decided in or about March, 1880. Q. (A paper shown witness.) State whether the names signed to that paper are those of stockholders of the complainant? A. Yes, sir, all of them. Q. Was that delivered to some officer of the complainant at about the time it bears date and to whom? A. Yes, sir; it was delivered to me. (Paper received in evidence and marked complainant's Exhibit H.) Q. State whether any verbal objections have been made by other stockholders of the bank to the tax moneys being paid over by the bank to the receiver of taxes? A. Yes,

98 sir, by others than those whose names are signed to paper marked complainant's Exhibit H.

Direct examination oft he witness Chauncey P. Williams here closed.

C. P. WILLIAMS.

Sworn to and subscribed before me, }
this 4th day of October, 1880. }

WILLIAM LANSING,
Examiner.

On his cross-examination by Hon. Rufus W. Peckham, of counsel for the defendants, the witness, Chauncey P. Williams, further deposed as follows:

The value of the stock of the Albany County Bank, September 1st, 1879, was about par; that is a State bank; of the Albany City National, at that date, from 105 to 110; of the First National, I should say in the neighborhood of 160 at that time; of the Union National Bank, I should think, about 110 at that time, and of the N. Y. State National Bank about 170 to 175; the receipt which we gave to the stockholders upon retaining the amount of
99 the tax upon their stock was by our advice probably or the money paid in or retained by the bank rather than the receipt; about one-half the shareholders paid in the tax in money and as to the balance it was retained from amount of their dividend; I think the paper marked H was gotten up by reason of the objections to the payment of the tax. After the decision at Washington these objections were made; some of them then applied to us to repay the tax; this was not by our advice, but I suppose because they wanted to get the money; as a matter of fact we have not repaid to any of these stockholders the tax retained or paid in; we have retained the money so far; in about half the cases I should judge we have paid the dividend to the stockholders
100 without respect to the tax; subsequent to such payment they have paid to our bank an amount of money equal to the tax; no suit has been commenced against us that I am aware of by any stockholder to recover the amount of this tax, nor am I aware of any other steps being taken by the stockholders other than the presentation of that paper, except what I have mentioned; no steps have been taken to enforce its repayment; I have heard of no threats to commence suit for its recovery.

C. P. WILLIAMS.

Sworn to and subscribed before me, }
this 4th day of October, 1880. }

WM. LANSING,
101 *Examiner.*

On his re-direct examination by counsel for complainant the witness, Chauncey P. Williams, further testified as follows:

The Mechanics and Farmers' Bank is a State bank. There were a considerable number of manufacturing corporations in Albany, September 1st, 1879.

C. P. WILLIAMS.

Sworn to and subscribed before me,
this 4th day of October, 1880.

WILLIAM LANSING,
102 *Examiner.*

The complainant offers in evidence the list of shareholders in complainant's bank annexed to the assessment roll of 1879, with the assessment rate and tax, a copy of which is to be annexed hereto and marked "Complainant's Exhibit I."

Adjourned to 4 P. M., October 5, 1880.

October 5th, 1880 — 4 P. M.

HENRY C. PECK being called, sworn and examined as a witness for the complainant by Hon. Matthew Hale, counsel for com-
103 plainant, deposes as follows: I reside in the city, and have all my life, except a year or two; I am a stockholder in complainant and was such September 1st, 1879. Q. Were you on the first day of September, 1879, indebted in an amount equal to your personal estate, including bank stock, other than investments in United States bonds and property invested in the stock or corporations or associations liable to be taxed therefor? (Objected as immaterial and incompetent.) A. Yes, sir. Q. 2. Did you make application to the assessors in 1879 for a reduction of your assessment upon bank stock on account of such indebtedness? A. No, sir, and did not present to them any affidavit of indebtedness.

Q. 3. Why did you not? (Objected to as immaterial and
104 incompetent, and as calling for the secret reason of the witness.) A. The decision had not been made at that time, and I did not understand I had any right to. Q. 4. Did you at that time understand that the courts of this State had decided that no deduction could be made by reason of indebtedness, from an assessment on bank stock. (Objected to as immaterial and incompetent.) A. I had kept no run of the thing at all, but I understood that that was the decision until the final decision until that was overruled. Q. 5. Would you have made the necessary affidavit and applied for such deduction if you had understood that such application would be granted under the laws as construed by the courts? (Objected to same as last.) A. Yes, sir.

105 Direct examination of the witness Henry C. Peck here closed.

HENRY C. PECK.

Sworn to and subscribed before me, this 5th day of October, 1880.

WILLIAM LANSING,
Examiner.

FRANCIS VAIL, being called and sworn as a witness for the complainant, by Hon. Matthew Hale, counsel for complainant, deposed as follows:

I live in the Sixth ward of the city of Albany; I have lived in the city of Albany over seventy-seven years; I am a stockholder in the complainant and was such on September 1, 1879. Q. 1. Were you, on the 1st day of September, 1879, indebted to an amount equal to the value of your personal estate, including bank stock, other than your property invested in the stock of corporations or associations liable to be taxed therefor, and your investments in bonds of the United States. (Objected to as im-
106 material and incompetent.) A. I was; I made no application for reduction of any assessment upon bank stock in 1879, to the assessor. Q. 2. Why didn't you make such application? A. I had not heard of any application being made. Q. 3. Would you have made the necessary affidavit and applied for a reduction from your assessment on account of your indebtedness if you had understood that such application would be granted under the law of this State? (Same objection as last made.) A. I would.

Direct-examination of the witness, Francis Vail, here closed.

FRANCIS VAIL.

Sworn and subscribed to before me this 5th day of October, 1880.

WILLIAM LANSING,
Examiner.

JAMES MCNAUGHTON being called and sworn as a witness
107 for the complainant and examined by Hon. Matthew Hale, of counsel for complainant, deposed as follows:

I reside in the city of Albany, and did on September 1st, 1879; I was then the owner of stock in the complainant, the Exchange Bank. Q. Did the value of personal estate owned by you at that time, including your bank stock after deducting your just debts, and your property invested in the stock of corporations or associations liable to be taxed therefor, and your investments in the bonds of the United States, exceed the sum of one dollar? (Objected to as immaterial and incompetent.) A. It did not. Q. 2. Did you make any application to the assessors in 1879 for

a reduction of your assessment on bank stock? (Same
108 objection as last made.) A. I did not. Q. 3. Did you then understand that it had been decided by the courts of this State that no objection could be made for such indebtedness? (Same objection as last made.) A. I so understood it. Q. 4. If you had not so understood, would you have made the necessary affidavit and applied for such deduction? (Same objection as last made.) A. Yes, sir, I would have made the application.

Direct-examination of witness James McNaughton here closed.

JAMES McNAUGHTON.

Subscribed and sworn to before me
this 5th day of October, 1880.

WILLIAM LANSING,
109 *Examiner.*

EDWARD A. DURANT being called and sworn as a witness for the complainant, and examined by Hon. Matthew Hale, of counsel for the complainant, deposed as follows:

I have heard the testimony of Mr. McNaughton, the last witness, and answer the same questions in regard to myself in the same way.

Testimony taken, subject to same objections as made to the testimony of witness McNaughton.

E. A. DURANT.

Sworn to and subscribed before me
this 5th day of October, 1880.

WILLIAM LANSING,
110 *Examiner.*

It is admitted that Mr. Lemon Thompson, if present and examined as a witness, would answer the same questions put to the witness McNaughton in the same manner as regards himself. The same objections are to be considered as made to such testimony of Lemon Thompson as here made to that of the witness McNaughton.

WILLIAM J. WEAVER being recalled for cross-examination, and examined by Rufus W. Peckham, counsel for the defendant, further deposes as follows:

Cross Q. Have you made a search into the amount of taxable property appearing by the statements by manufacturing cor-
111 porations to the assessors for 1879? A. I have. Cross Q. What amount of taxable personal property do you find reported by these statements? A. One hundred and twenty-nine thousand two hundred and four dollars, upon which there was an assessment of eighty-seven thousand dollars made by us as assessors.

On his redirect-examination by Hon. Matthew Hale, of counsel

for complainant, the witness William J. Weaver further deposed as follows:

This statement includes one gas company; we were not in all instances confined to the returns of the companies in making up our assessments. Re-direct Q. Did you assess these corporations in all cases at only twenty-five per cent of what you determ-
112 ined by the returns or otherwise to be their taxable personal property? A. As near as the assessors could get to such per centage; all manufacturing corporations of the city made statements to us, but some returned no taxable property; I know of no stock insurance companies in the city of Albany except those I have already mentioned; no stockholders of other corporations than banks were in 1879 assessed or taxed upon their shares; deductions for indebtedness were made when applied for, upon proper affidavit from assessment upon all other personal property than bank stock; bank stock was the only personal property that was kept separate from other property by a special list upon the assessment rolls; I was examined as a witness in the case of
113 Williams against Weaver before the referee.

WILLIAM J. WEAVER.

Sworn to and subscribed before me, }
this 5th day of October, 1880. }

WILLIAM LANSING,
Examiner.

It is admitted that many of the stockholders in the above men-mentioned manufacturing and insurance companies, and also in the banks above mentioned, including the two State banks, are citizens of the State of New York.

Also admitted the allegations of the complaint, as follows: "That the said assessments (of 1879) were completed containing the said assessment of the stockholders of complainant upon their shares of the capital stock of the complainant, and the assessment roll certified by the board of assessors as required by law, was delivered by the said board of assessors to the supervisor of the Sixth ward of the city of Albany, who delivered the same to the Board of Supervisors of the county of Albany at their next
114 meeting, as required by the act to provide for the assessment and collection of taxes in the city of Albany above mentioned, and the supervisors of the county of Albany thereupon assessed the taxes to be raised on real and personal estate, and annexed to the names of the shareholders in complainant upon the assessment roll, on account of the said assessment upon said shares, a tax amounting in the aggregate to about seven thousand six hundred and fifty-five dollars, and delivered the said assessment roll to the above named Charles A. Hills, the receiver of taxes of the city of Albany, on or about the 15th day of December, 1879,

having first annexed thereto their warrant under the hands and seals of the Board of Supervisors, in pursuance of the act
115 last mentioned, commanding such receiver to collect from the several persons named in the said assessment roll the amount of the tax therein mentioned, and to pay over the same in the manner directed in the said warrant. That the said receiver of taxes afterwards, in pursuance of the said last mentioned act, having published the notices and waited the time required by said act, issued his warrant, under his hand and seal, to the above named Michael E. Higgins, marshal of said city of Albany, commanding him to levy the tax with interest on the same at the rate of twelve per cent per annum, to be calculated from the first day of February preceding by distress and sale of the
116 goods and chattels of the person upon whose real or personal estate the said tax was apportioned, according to the said assessments and tax rolls, or of any goods or chattels in his possession wheresoever the same should be found within the city and county of Albany, and to pay the same to the said receiver and to return said warrant within thirty days after the date thereof."

Also, are admitted the allegations of the bill of complaint as follows: "That the above named Michael E. Higgins, as marshal of the city of Albany, accompanied by the above named Charles A. Hills, as receiver of taxes of said city, has appeared at the banking-house of complainant, having the warrant issued to
117 said marshal by said receiver of taxes, as aforesaid, and has demanded payment of the said taxes, amounting, with interest and expenses, to about $8,800, and the said Higgins, as such marshal, under and in pursuance of said warrant, threatens to and will, unless restrained by the injunction of this honorable court, immediately proceed to enforce the collection of the said taxes, either by seizing the goods and chattels of said shareholders or by seizing the moneys belonging to the said shareholders in the hands of complainant, or by selling the shares of stock owned by said shareholders respectively, or by action to collect such taxes from the avails of the sale of said shares, pursuant to said chapter 761 of the Laws of 1866."

118 Complainant puts in evidence the records in the United States Supreme Court in the cases of Williams v. Weaver and others, and People ex rel. Williams v. Weaver and others. If admitted, either party may refer to them upon the agreement.

Records objected to as incompetent and immaterial, but not on the ground that these are not properly authenticated.

Admitted that the assessed valuation of real estate in the county of Albany for the year 1879 was $49,167,339; of the personal property in that county for that year, $4,596,342; total, $53,763,681.

It is further admitted that the total amount of tax to be col-

lected from the whole county (which includes the city of
119 Albany) upon real and personal property was $1,289,-844.13, of which the city of Albany was to pay $1,024,-421.14, and the rate of taxation in the greater part of the city (including the Sixth ward) was $2.80 per one hundred dollars.

COMPLAINANT'S EXHIBIT A — W. L. Ex.

(Please state the full name of the corporation.)

STATEMENT *made and delivered to the board of assessors of the city of Albany, for and in behalf of the Commerce Insurance Company, showing its condition for the purpose of assessment on the 1st day of July*, 187 .

Capital stock actually paid in or secured to be paid in, $200,000.

AMOUNT OF SURPLUS BEYOND CAPITAL.	Par value.	Market value.
Amount invested in United States securities	$210,000 00	$248,000 00
120 AMOUNT INVESTED IN ANY AND ALL OTHER SECURITIES.		
Stock in First National Bank	20,000 00	30,000 00
Stock in National Commercial Bank	15,000 00	37,500 00
Stock in National Exchange Bank	8,000 00	10,000 00
Stock in Union National Bank	5,000 00	5,500 00
Stock in N. Y. State Bank	5,000 00	7,500 00
Real estate owned by this company, cash	40,000 00	40,000 00
Loans on stock collaterals	5,000 00	5,000 00
Cash in the company's principal
121 office; cash in bank belonging to this company	4,271 00	4,271 00
Interest due and accrued on July 1st on stocks and bonds owned, not included in market value	7,337 00	7,337 00
Premiums in due course of collection	5,556 00	5,556 00
Rents due and accrued	165 00	165 00
All other property owned by this company		$400,829 00

122 DEDUCTIONS.	
United States bonds, par value	$200,000 00
Bank stocks otherwise assessed	90,500 00
Any other stocks and bonds otherwise assessed	
Real estate, cost thereof	40,000 00

	Par value.	Market value.
Unpaid losses	5,325 00	
Unearned premiums, fifty per cent thereof	40,253 00	
Ten (10) per cent on capital of assessed surplus	20,000 00	
123 Outstanding debts unpaid July first	574 00	
		396,652 00
		$4,177 00

The principal office or the place of transacting the financial business of the said corporation, is situated in the Sixth ward of the city of Albany, at No. 57 State street.

STATE OF NEW YORK, }
COUNTY OF ALBANY, } *ss.:*

I, G. A. Van Allen, the vice-president of the said corpo-
124 ration, being duly sworn, do hereby certify and declare that the foregoing statement is in all respects just and true.

G. A. VAN ALLEN,
Vice-President.

Sworn to before me, this 27th day of August, 1879.

RICH'D VARICK DE WITT,
Notary Public, Albany Co., N. Y.

By chapter 176, section 6, of the Laws of 1851, the assessors are empowered to examine, under oath, the person representing the corporation, if they deem it necessary to obtain any fuller
125 or further particulars as to its property or conditions.

This item is required to be returned at 50 per cent. of premium on policies running one year or less, and pro rata on policies running more than one year.

COMPLAINANT'S EXHIBIT B—W. L. L.

126 (Please state the full name of the corporation.)

STATEMENT *made and delivered to the board of assessors of the city of Albany for and in behalf of the Albany Insurance Company, showing its condition for the purpose of assessment on the 1st day of July*, 1879.

Capital stock actually paid in or secured to be paid in,	$200,000 00
Amount of surplus beyond capital	214,157 57

	Par value.	Market value.
Amount invested in United States securities	$300,000 00	$313,350 00
127 AMOUNT INVESTED IN ANY AND ALL OTHER SECURITIES.		
Albany city bonds	20,000 00	24,800 00
Syracuse city bonds	5,000 00	5,700 00
Poughkeepsie city bonds	5,000 00	5,600 00
Chicago city bonds	5,000 00	5,000 00
Jersey City bonds	5,000 00	5,000 00
Watervliet T. & R. R. bonds	15,000 00	15,500 00
N. Y. Central R. R. bonds	15,000 00	15,750 00
Buffalo and Erie R. R. bonds	5,000 00	5,800 00
128 Totals	$375,000 00	$396,500 00
Real estate owned by this company, cost:		
Loans on stock collaterals	$750 00	
Cash in the company's principal office; cash in bank belonging to this company		15,384 83
Interest due and accrued on July first on stocks and bonds owned, not included in market value		887 91
Premiums in due course of collection		634 83
Rents due and accrued		.....
129 All other property owned by this company		$414,157 57
DEDUCTIONS.		
United States bonds, par value	$300,000 00	
Bank stock otherwise assessed	.....	
Any other stocks and bonds otherwise assessed:		
Stock of the company owned by the State of New York	4,000 00	
Real estate, cost thereof	.....	
Unpaid losses	2,620 19	
130 Unearned premiums, 50 per cent thereof	33,269 92	
Ten (10) per cent on capital of assessed surplus	5,926 74	
Outstanding debts unpaid July first, dividend declared June twenty-eighth	15,000 00	
		360,816 85
Balance		$53,340 72

The principal office or the place of transacting the financial business of the said corporation is situated in the Sixth ward
131 of the city of Albany, at State street, corner Chapel street.

STATE OF NEW YORK, }
COUNTY OF ALBANY, } *ss.:*

I, Theodore Townsend, Secretary of the said corporation, being duly sworn, do hereby certify and declare that the foregoing statement is in all respects just and true.

THEODORE TOWNSEND,
Secretary.

Sworn to before me this 20th day of August, 1878.

B. W. JOHNSON,
132 *Notary Public, Albany Co.*

By chapter 176, section 6, of the Laws of 1851, the assessors are empowered to examine, under oath, the person representing the corporation, if they deem it necessary to obtain any fuller or further particulars as to its property or condition.

This item is required to be returned at fifty per cent of premium on policies running one year or less, and pro rata on policies running more than one year.

COMPLAINANT'S EXHIBIT C. — W. L. Ex.

STATE OF NEW YORK, }
133 CITY AND COUNTY OF ALBANY, } *ss.:*

I, Chauncey P. Williams, being duly sworn, do depose and say that the value of personal estate owned by me, including my bank stock, after deducting my just debts, and my property invested in the stock of corporations or associations liable to be taxed therefor, and my investments in the bonds of the United States, does not exceed the sum of one dollar.

(Signed) C. P. WILLIAMS.

Subscribed and sworn before me this 17th September, 1879.

WM. E. CORNELL,
134 *Notary Public.*

COMPLAINANT'S EXHIBIT D — W. L. Ex.

Quarterly Report of the Mechanics and Farmers' Bank, on the morning of Saturday, the 14th day of June, 1879.

RESOURCES.

Loans and discounts, as per schedule..		$297,722 77
Due from directors of the bank, included in loans and discounts	$36,000 00	
Overdrafts, as per schedule		363 08
135 Due from trust companies, State and National banks, as per schedule		507,132 80
Due from private bankers and brokers, as per schedule:		
Banking-house and lot, as per schedule	20,000 00	
Other real estate, as per schedule...	15,000 00 3,008 00	23,008 00
Bonds and mortgages, as per schedule,		25,813 94
Stocks and bonds, as per schedule....		1,098,500 00
Specie.....		16,030 00
United States legal tender notes and circulating notes of National Banks,		44,150 00
Cash items, viz.:		
136 Bills and checks for the next day's exchange.....	12,107 47	
Other items, carried as cash, as per schedule	60,368 47	
		72,475 96
Fractional currency (including nickels)		900 00
Assets not included under either of the above heads, viz.:		
Profit and loss.....		37,796 32
		$2,123,892 87

LIABILITIES.

137 Capital stock paid in cash.....		$350,000 00
Surplus fund		650,000 00
Due depositors as follows, viz.:		
Deposits subject to checks	$997,196 26	
Demand certificates of deposit.....	10,693 36	
Time certificates of deposit:		
Certified checks.....	9,613 47	
		1,017,503 09
Due trust companies, State and National banks, as per schedule.....		102,650 55

	Due individuals and corporations, other than banks and depositors, as		
138	per schedule		$108 00
	Amount due, not included under either of the above heads, viz.:		
	Unpaid dividends	$720 00	
	United States taxes	2,919 23	
			3,639 23
			$2,123,892 87

[This property is situated at Corning, Steuben county, N. Y., and was taken for a debt due this bank, which debt has
139 been charged over to profit and loss.
This amount is made up principally of government bonds.]

STATE OF NEW YORK, }
CITY AND COUNTY OF ALBANY, } *ss.:*

Thomas W. Olcott, president, and George I. Davidson, cashier of Mechanics and Farmers' Bank, a bank located and doing business at Albany, N. Y., in said county, being duly sworn, each for himself, saith that the foregoing, with the schedule accompanying the same is, in all respects, a true statement of the condition of the said badk, before the transaction of any business, the 14th day of June, 1879, to the best of his knowledge and belief.

THOMAS W. OLCOTT, *President.*
140 GEORGE G. DAVIDSON, *Cashier.*

Severally subscribed and sworn by both deponents, the 17th day of June, 1879, before me,

D. W. WEMPLE, *Notary Public.*

COMPLAINANT'S EXHIBIT E — W. L. Ex.

Report of the condition of the Merchants' National Bank at Albany, in the State of New York, at the close of business, on the 14th of June, 1879.

RESOURCES.

	Loans and discounts	$698,930 15
141	Overdrafts	870 47
	United States bonds, to secure circulation	198,000 00
	United States bonds, to secure deposits	100,000 00
	United States bonds on hand, including $1,390	
	United States refunding certificates	71,390 00
	Other stocks, bonds and mortgages	9,453 33
	Due from approved reserve agents	547,181 96
	Due from other National banks	113,500 12
	Due from State and private banks and bankers	11,830 02
	Banking-house	40,000 00

	Premiums paid		$29,230 54
142	Checks and other cash items		17,317 46
	Exchanged for clearing-house		74,543 98
	Bills of other banks		2,388 00
	Fractional paper currency, nickels and cents		1,562 99
	Specie, viz.:		
	Gold coin	$5,042 00	
	Silver coin	2,940 00	
			7,982 00
	Legal tender notes		85,000 00
	United States certificates of deposit for legal tender notes		70,000 00
	Redemption fund with United States Treasurer (not more than five per cent on circulation)		8,910 00
	Total		$2,088,091 02

143	LIABILITIES.	
	Capital stock paid in	$200,000 00
	Surplus fund	200,000 00
	Undivided profits	25,269 43
	Circulating notes received from Comptroller	178,200 00
	Dividends unpaid	277 50
	Individual deposits subject to check	1,342,707 57
	United States deposits	74,673 29
	Deposits of United States disbursing officers	9,153 60
	Due to other National banks	31,931 70
	Due to State and private banks and bankers	25,877 93
	Total	$2,088,091 02

STATE OF NEW YORK, }
COUNTY OF ALBANY, } *ss.:*

144 I, N. D. Wendell, cashier of the Merchants' National Bank of Albany, N. Y., do solemnly swear that the above statement is true to the best of my knowledge and belief.

N. D. WENDELL,
Cashier.

Sworn to and subscribed before me, }
this 20th day of June, 1879. }
JAMES MAHER,
Notary Public.

Correct attest: — RICHARD VAN RENSSELAER,
J. W. TILLINGHAST,
145 GEO. A. WOOLVERTON,
Directors.

COMPLAINANT'S EXHIBIT F. — W. L. Ex.

REPORT *of the condition of the National Commercial Bank, at Albany, in the State of New York, at the close of business June* 14, 1879:

RESOURCES.

	Loans and discounts	$1,177,874 41
	Overdrafts	1,643 36
	United States bonds to secure circulation	300,000 00
	United States bonds on hand	1,023,200 00
146	Other stocks, bonds and mortgages	102,676 77
	Due from approved reserve agents	913,328 45
	Due from other National banks	133,620 30
	Real estate	79,000 00
	Premiums paid	32,650 00
	Checks and other cash items	53,859 44
	Exchanges for clearing-house	15,107 69
	Bills of other banks	40,370 00
	Fractional currency (including nickels)	1,023 12
	Specie (including gold treasury certificates)	28,000 00
	Legal-tender notes	35,000 00
147	United States certificates of deposit for legal-tenders	245,000 00
	Redemption fund with United States treasurer (five per cent of circulation)	10,514 26
	Total	$4,192,867,80

LIABILITIES.

	Capital stock paid in	$300,000 00
	Surplus fund	500,000 00
	Undivided profits	22,727 58
	National bank notes outstanding	268,200 00
148	Dividends unpaid	468 00
	Individual deposits, subject to check	2,968,637 26
	Demand certificates of deposit	963 39
	Certified checks	12,703 67
	Due to other National banks	97,222 56
	Due to State banks and bankers	21,945 34
	Total	$4,192,867 80

STATE OF NEW YORK, }
COUNTY OF ALBANY, } *ss.:*

I, Edward A. Grosbeck, cashier of the above named bank,
149 do solemnly swear that the above statement is true to the best of my knowledge and belief.

EDWARD A. GROSBECK,
Cashier.

Subscribed and sworn to before me, }
this 21st day of June, 1879. }

ISAAC B. BRIGGS,
Notary Public.

Correct attest: — ROBERT H. PRUYN,
ROBERT L. JOHNSON,
150 DANIEL MANNING,
Directors.

COMPLAINANT'S EXHIBIT G. — W. L. EX.

STATEMENT *to Comptroller of the Currency, June* 14, 1879:

Loans and discounts		$219,577 10
		6 25
United States bonds — Circulation		300,000 00
United States bonds — Deposits		1,470,000 00
United States bonds on hand		258,800 00
Other stocks, bonds, etc		17,243 94
Due from reserve agents		321,895 24
Due from other National banks		159,050 53
151 Due from State banks and bankers		14,230 59
Banking-house		20,000 00
Premium account		13,342 09
Checks and other cash items		23,972 28
Exchange		23,948 22
Bills of other banks		34,398 00
Fractional currency, etc		98 43
Specie — Gold	$27,678	
Specie — Silver	800	
Specie — Gold c'd	5,000	
		33,478 00
152 Legal-tender notes		78,000 00
Redemption fund		13,500 00
Total		$3,001,540 67

Capital stock	$300,000 00
Surplus fund	120,000 00
Undivided profits	9,547 85

Circulating notes		$270,000 00	
Less amt. on hand		3,100 00	
			$266,900 00
153 Individual dep. subject to check			392,717 80
Individual demand c'd			13,083 24
U. S. deposits			1,208,819 18
Due to National banks			621,051 65
Due to State banks and bankers			69,420 95
			$3,001,540 67

(Copy of statement.)

C. P. WILLIAMS,
President.

COMPLAINANT'S EXHIBIT H — W. L. Ex.

154 *To the National Albany Exchange Bank and its President and Cashier:*

The undersigned stockholders in said bank who have heretofore paid into said bank the amount of the tax assessed against us respectively and claimed by the marshal of the city of Albany, to be due for taxes on our respective shares, do hereby forbid the said bank or its officers, from paying said tax on our respective shares or any part thereof, the law of the State of New York under which the said tax was assessed having been decided to be in violation of the laws of the United States and void; and the said tax having been unlawfully assessed against us; and we hereby revoke and countermand any power or authority heretofore given
155 by us to said bank or any of its officers, to pay said tax; and we hereby demand from said bank the moneys so paid in by us as aforesaid; and we hereby deny the right of said bank to retain said moneys or to retain any part of any dividend or dividends belonging to us until the payment of said tax; and we hereby authorize and request said bank on behalf of the stockholders of said bank to resist the payment of such taxes as illegal and unauthorized and to take such legal measures as may be necessary to prevent the collection thereof.

WM. G. THOMAS, WILLIAM GOULD, JR.,
WM. McELROY, ROBERT C. PRUYN,
LANSING MERCHANT, OSCAR L. HASCY.

156 Dated *May* 11, 1880.

COMPLAINANT'S EXHIBIT I — W. L. Ex.

LIST *of persons assessed for stock in National Exchange Bank of Albany*, 1879, *and amount of assessment and tax.*

		Personal.	Amount of tax.
	Mrs. Mary E. Allen	$2,250	$63 00
	Wm. M. Bender	4,500	126 00
	Mrs. Maria Bender	4,500	126 00
	Anson H. Blakeman	1,800	50 40
	Mrs. Martha P. Butler	900	25 20
	Wm. J. Blackall	1,260	35 28
	Theo. F. Cornell	2,250	63 00
157	Commerce Insurance Co	7,200	201 60
	Mrs. Amelia A. Cobb	4,500	126 00
	Thomas B. Cole	1,170	32 76
	Phœbe Comstock	1,800	50 40
	Sarah A. Clapper	990	27 72
	Edward A. Durant	4,500	126 00
	Estate Wm. Dickson	900	25 20
	Sarah M. Deyermand	450	12 60
	Mrs. Ann De Witt	3,150	88 20
	Elizabeth K. Darling	900	25 20
	Mrs. R. Eames	1,800	50 40
	Mrs. Hester S. Emerson	900	25 20
158	Milo E. Eames	2,700	75 60
	Miss A. Y. Fairchild	450	12 60
	Wm. Gould	27,900	781 20
	Mrs. Sarah M. Gould	180	5 04
	John Gould, estate	720	20 16
	Kirk E. Gardner, Ex. Daniel Gardner	360	10 08
	Sarah M. Gardner	180	5 04
	Charlotte Gardner	90	2 52
	Thos. H. Greer	2,250	63 00
	Thos. H. Greer, Ex	2,250	63 00
	Wm. Gould, Jr	900	25 20
	Mrs. Harriet Hilton	900	25 20
159	O. L. Hascy	900	25 20
	Mrs. Hannah Hill	1,890	52 92
	David Hill	630	17 64
	Ebenezer Hill	630	17 64
	E. Hill, trustee for Chas. J. Hill	630	17 64
	E. Hill, trustee for Fannie A. Andrews	630	17 64
	E. Hill, trustee for Annie M. Thomas	630	17 64
	E. Hill, trustee for Mary E. Newman	630	17 64
	E. Hill, trustee for Sarah E. Belden	630	17 64
	Chas. B. Lansing	2,250	63 00
	Mrs. Sarah A. Lansing	1,350	37 80
	Mrs. Mary L. G. Lewis	90	2 52

		Personal.	Amount of tax.
160	Mrs. Caroline M. Lathrop	$900	$25 20
	Lansing Merchant	7,650	214 20
	J. B. McCoy	22,500	630 00
	Wm. McElroy	9,000	252 00
	Jas. McElroy	440	12 60
	Henry G. Mesick	5,400	151 20
	Estate Peter Monteath	900	25 20
	Henry G. McNaughton	1,440	40 32
	Mrs. Jesse McMiller	1,440	40 32
	Miss Caroline McNaughton	630	17 64
161	James McNaughton	150	12 60
	Miss Anna McNaughton	630	17 64
	Miss Catharine McNaughton	630	17 64
	Miss Garret McNaughton	630	17 64
	Alexander McNaughton	630	17 64
	Est. Amos Pilsbury	6,300	176 40
	Mary Patrick	900	25 20
	Spencer S. B. Peck	900	25 20
	Henry C. Peck	900	25 20
	Samuel S. Peck	900	25 20
	Myron R. C. Peck	900	25 20
	Alvah Pierce, Treas. (Baptist Ed. Society), not taxable.		
162	Estate J. V. L. Pruyn	13,050	365 40
	Robert C. Pruyn	900	25 20
	Agnes Pruyn	4,050	113 40
	James Ray Estate	900	25 20
	Mrs. Elizabeth T. Spoor	900	25 20
	Adam Shields	270	7 56
	Theo. S. Scott	900	25 20
	Wm. G. Thomas	9,000	252 00
	Lemon Thompson	4,500	126 00
	Mrs. Margaret McN. Thompson	630	17 64
	David A. Thomas, for Jas. McN. Thompson	90	2 52
163	John L. Voorhees	900	25 20
	Francis Vail	1,350	37 80
	Edward Visscher	1,080	30 24
	Richard Van Rensselaer	90	2 52
	Richard Van Rensselaer, Executor	450	12 60
	Richard Van Rensselaer, Adms	540	15 12
	Catherine Van Schack Estate	900	25 20
	James C. Visscher, Executor	450	12 65
	Thomas E. Van Loon	900	25 20
	Mrs. N. Louisa Van Alstyne	3,600	100 80
	Chauncey P. Williams	47,880	1,340 64
	Geo. P. Wilson	1,350	37 80
164	Abram P. Wilson	1,800	50 40

	Personal.	Amount of tax.
Abram Wing, S. Brown, Ex..... ...	$1,800	$50 40
Josiah P. Williams	4,500	126 00
S. H. Wendover	2,700	75 70
Martha H. Williams....	4,500	126 00
	$269,550	$7,547 40

Paid Jan. 14, $87.32.

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165 UNITED STATES CIRCUIT COURT.

NORTHERN DISTRICT OF NEW YORK.

THE NATIONAL ALBANY EXCHANGE BANK *against* CHARLES A. HILLS, Receiver of Taxes, and MICHAEL E. HIGGINS, Marshal of the city of Albany. } In Equity.

I, William Lansing, examiner, duly appointed by the Circuit Court of the United States for the Northern District of New York, in the Second Circuit, do hereby certify that on the days
166 named in the depositions hereto annexed, I was attended, at the office of Hand & Hale, No. 25 North Pearl street, in the city of Albany, N. Y., by the counsel and witnesses aforesaid; that the said witnesses were severally duly sworn and examined, and the depositions were reduced to writing and read to the witnesses, and by them subscribed in my presence. And that exhibits marked complainant's exhibits A, B, C, D, E, F, G, H and I, hereto annexed, were introduced in evidence in said cause during the taking of said depositions.

WILLIAM LANSING,
Examiner.

167 Dated Albany, *October* 7th, 1880.

It is admitted, on the 1st day of September, 1879, complainants had an amount equal to its entire capital and surplus invested in bonds of the United States.

Dated *November* 6, 1880.

R. W. PECKHAM,
Attorney for Defendants.

HAND & HALE,
Attorneys for Complainant.

(Endorsed:) No. 2848. United States Circuit Court, Northern District of New York. The National Albany Exchange Bank against Charles A. Hills, receiver, etc. Copy testimony.
168 Hand & Hale, attorneys for plaintiff. R. W. Peckham, attorney for defendants. Filed December 2, 1880.

UNITED STATES CIRCUIT COURT.

NORTHERN DISTRICT OF NEW YORK.

THE NATIONAL ALBANY EXCHANGE BANK *against* CHARLES A. HILLS ET AL. } Copy Opinion.

WALLACE, J. — The complainant has filed its bill in equity to enjoin the collection of a tax assessed in 1879 against its shareholders by the board of assessors of the city of Albany, the
169 defendants being the officers of the city charged with the collection of taxes.

The bill proceeds upon the theory, first, that the assessment against the shareholders is void because there was no legal authority for making any assessment. Second. If not void for want of original authority it was based upon a rule of unequal valuation of different classes of property intentionally adopted by the assessors in order to discriminate unjustly against shareholders of national banks and was excessive, and as to the excess the collection of the tax should be restrained.

Both of these theories are grounded on that section of the act of Congress relating to National banking associations which
170 restricts taxation of shares in such associations imposed by the authority of the State within which the association is located by providing "that the taxation shall not be at a greater rate than is assessed upon other money capital in the hands of individual citizens of such States."

The assessment complained of was under color of an act of the legislature of this State, passed April 23, 1866, entitled "An act authorizing the taxation of banks and surplus funds of savings banks." This act, as construed by the highest court of the State in view of previous legislation and upon consideration of the various provisions and directions of the act itself, established a system of taxation for bank shares "peculiar to itself and independ-
171 ent of the general system of taxation in existence in the State," and upon this ground it was decided by the Court of Appeals (Dolan v. The People, 36 N. Y., 59) that a bank shareholder who had been assessed upon the value of his shares was not entitled to any deduction on account of his debts, although the general laws of the State and the local law relating to assessments in the city of Albany contained provisions whereby in the assessment of personal property a deduction should be made for the debts owing by the person assessed.

So far as this act contravenes the law of Congress by
172 imposing a tax upon shares of National banking associations at a greater rate than is assessed upon other moneyed capital in the hands of individuals concededly it cannot stand, but

the point in controversy is whether an assessment made under the act is void for want of power in the assessors to make any assessment or is only erroneous when made without granting the deductions allowed by the general laws of the State.

If the assessors have no power to make a valid assessment of the shares *eo nomine* or against the owners for the value of their shares the whole foundation of the taxation fails. On the other hand, if the assessors have authority to assess under the statute in question or under the other statutes of the State, then the inquiry
173 arises whether the assessment is erroneous because the proper deductions were denied or because a rule of valuation which discriminated unfairly against the stockholders was adopted, and it is being so whether is any remedy except in a direct proceeding to review the assessment.

Obviously if the first theory of the complainant is sound it is of no importance whether the shareholders of the complainant were in fact owing debts which should have been deducted from the assessment or not because there was no jurisdiction for any action on the part of the assessors.

In the view of the case which I am constrained to adopt it will not be necessary to examine the second theory which has
174 been alluded, a theory which, upon the facts, involves several difficult and doubtful questions of law; but I am of the opinion that the only authority for the assessment is to be found in the statute of 1866, and that act, as respects taxation of shares in National banking associations, is radically vicious and can have no operation.

This decision is predicated upon the decision in Dolan v. The People and upon the case of People v. Weaver, 100 U. S., 539.

The construction given to the act in Dolan v. The People explicitly to the effect that the act is intended to establish a system of taxation for bank capital peculiar to itself and independent of the general system of taxation in existence in the State. It
175 is there declared that the act was intended as a substitute for the then existing mode of assessing and taxing that portion of the property of the State invested in the capital of the moneyed corporations.

If this is the correct exposition of the statutory intent it cannot be questioned that the act must stand or fall upon its own provisions, and cannot be sustained by treating it as a part of the general system of taxation and reading it as though it contained those provisions found in other parts of the system which would secure to the holder of bank shares the same exemption and privileges allowed to the holders of other money capital.

Accepting this as the true construction of the law it was
176 held by the Supreme Court of the United States in People v. Weaver, that the operation of the law was to impose upon a citizen of the State whose money capital was invested in

bank shares at a greater rate of taxation than was imposed on those whose capital was otherwise invested in violation of the prohibition of the law of Congress. It was only necessary to decide the particular case that the person assessed was entitled to the deduction from his assessment on account of his debts which he claimed, and the question was not before the courts whether or not the whole assessment was void, but the opinion proceeds upon the ground, and expressly declares that the statute of the State is in conflict with the act of Congress because it does not permit
177 such deduction on account of debts.

It would seem that these decisions are conclusive to the effect that the act of 1866 is to be regarded as though it in terms declared not only that the shares in National banking associations should be taxed at a rate and upon an assessment prohibited by the act of Congress, but also as though it declared that no other tax should be imposed on account of such shares, because being a substitute for the existing provisions of the general laws as respects the taxation of capital represented by bank shares it is by implication a repeal of the provision.

The decisions of the courts of a State in the construction of a State statute where no federal question is involved are
178 conclusive upon the courts of the United States, and the construction which was given by the Court of Appeals to this statute has been recognized as controlling and final by the Supreme Court of the United States.

But it is urged on behalf of the defendants that the Court of Appeals may reconsider its views in the light of the decision of the Supreme Court, and the consequences which ensue from that decision.

Undoubtedly these consequences may be serious, as shareholders of National banks may in some instances escape the payment of taxes upon their personal property to the extent such property is involved in bank shares. This consideration, as well as those graver ones, which lead courts to seek for some construction of a law which will uphold it if possible, would appeal with great force to any tribunal before which the question originally presented might come. But this court must take the law as it finds it, and
179 must accept the decision of the Court of Appeals as authoritative.

This court cannot substitute, in the place of that decision, its own judgment as to what the Court of Appeals might possibly decide upon a reconsideration of the questions involved.

Besides the decision of the Court of Appeals, reference should be made to the act of the legislature of June 26, 1880, as a legislative exposition of the act of 1866. The later act is clearly intended as a substitute for the act of 1866, and does not vary essentially in its provisions from the earlier act, except that it expressly declares that in the assessment of bank shares each stockholder shall be

allowed all the deductions and exemptions allowed by law in
180 assessing the value of other taxable personal property owned by individual citizens of the State, and the assessment and taxation shall not be at a greater rate than is made or assessed on other moneyed capital in the hands of individual citizens of this State.

This act was wholly unnecessary if, as is contended for the defendants, the original act should be construed as though the provisions of the general laws relating to reductions were incorporated in it.

It is much to be regretted that the conclusion thus reached may lead to the loss of a large sum in taxes justly due from taxpayers to the municipality represented by the defendants. But the result must be attributed to ill considered legislation, which by attempting to impose an exceptional and unjust rule of taxation upon shareholders of National banks, has so far overshot its mark as to exonerate them from any taxation.

It is insisted for the defendants that the complainant is
181 not the proper party to resist the payment of the tax and that the stockholders are the only persons who can complain, and it is also insisted that an action to enjoin the collection of the tax is not the appropriate remedy. The objections may properly be considered together. The general rule that a bill in equity will not lie to restrain the collection of a tax is familiar, but the right to the relief sought here rests upon the ground that it is necessary to prevent a multiplicity of suits likely to arise, owing to the peculiar position which the complainant occupies towards its shareholders on the one side and the defendants on the other.

The act of 1866 makes it the duty of every banking
182 association to retain so much of any dividend or dividends belonging to its shareholders as may be necessary to pay any taxes assessed in pursuance of that act and the case shows that most of the shareholders of the complainant paid to the complainant the amount severally assessed upon their shares for the tax in controversy or allowed the amount of the assessments to be retained from their dividends, but that prior to the commencement of this action a considerable number of the shareholders filed their protest and forbade the complainant to pay over the amounts or to retain them for the purpose of paying the tax. The statute imposes a duty on the complainant in the nature of a trust, but which it can only discharge at the peril of being
183 subjected to numerous suits at the hands of those whose money it retains, as is said in the similar case of Cummings v. National Bank (101 U. S., 157), "it holds a trust relation which authorizes a court of equity to see that it is protected in the exercise of the duties pertaining to it. To prevent multiplicity of suits equity may interfere."

It is true the statute in terms does not require the banks to pay the taxes assessed against its shareholders, but by necessary implication it authorizes the banks to do so and thus brings the case precisely within the facts of Cumming v. National Bank. That case must be regarded as a decisive authority against the objections urged here to the right of the complainant to the
184 relief demanded.

A decree is ordered for complainant.

Filed Dec. 2, 1880.

IN THE CIRCUIT COURT OF THE UNITED STATES.

NORTHERN DISTRICT OF NEW YORK.

THE NATIONAL ALBANY EXCHANGE BANK *against* CHARLES A. HILLS, Receiver of Taxes, and MICHAEL E. HIGGINS, Marshal of the City of Albany. } In Equity.

CITY AND COUNTY OF ALBANY, *ss.:*

Nathaniel Niles being duly sworn says, that on the 6th day of January, 1881, at their office in the city of Albany, N. Y., he served the annexed bond on Messrs. Hand, Hale & Bulk-
185 ley, the attorneys for the plaintiff in above entitled action, by delivering to and leaving with a clerk in charge of their office a copy of the same. Deponent further says that he knew the person served as aforesaid to be a clerk in the office of the attorneys above named, and that they were absent therefrom.

NATHANIEL NILES.

Sworn to before me, January 7, 1881.

J. HAMPDEN WOOD,
U. S. Circuit Court Commissioner,
Northern District of New York.

186 SUPREME COURT OF THE UNITED STATES.

CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF NEW YORK.

THE NATIONAL ALBANY EXCHANGE BANK
against
CHARLES A. HILLS, Receiver of Taxes, and MICHAEL E. HIGGINS, Marshal of the City of Albany. } In Equity.

Know all men by these presents, that we, Charles A.
187 Hills, Michael E. Higgins and Simon W. Rosendale, are held and firmly bound unto The National Albany Exchange Bank in the sum of five hundred dollars, to be paid to the said The National Albany Exchange Bank. To which payment, well and truly to be made, we bind ourselves and each of us jointly and severally, and our and each of our heirs, executors, administrators and assigns firmly by these presents.

Sealed with our seals.

Dated *December* 22, 1880.

Whereas, The above named Charles A. Hills and Michael E. Higgins have taken an appeal to the Supreme Court of the United States, to reverse the decree rendered in the above entitled suits by the Circuit Court of the United States for the Northern District of New York,

188 Now, therefore, the condition of this obligation is such that if the above named defendants shall prosecute their said appeal to effect and answer all costs if they shall fail to make good their plea, then this obligation shall be void, otherwise to remain in full force and virtue.

CHARLES A. HILLS. [L. S.]
M. E. HIGGINS. [L. S.]
SIMON W. ROSENDALE. [L. S.]

NORTHERN DISTRICT OF NEW YORK, *ss.:*

On this 23d day of December, 1880, before me, the subscriber, appeared Charles A. Hills, Michael E. Higgins and Simon W. Rosendale, to me personally known to be the same persons described in and who executed the above undertaking, and severally
189 acknowledged that they executed the same.

J. HAMPDEN WOOD.
U. S. Circuit Court Commissioner,
Northern District of N. Y., Albany, N. Y.

NORTHERN DISTRICT OF NEW YORK, *ss.:*

Simon W. Rosendale, being duly sworn, says that he is a resident of the city and county of Albany and State of New York, and that he is a freeholder and is worth the sum of one thousand dollars over and above all debts and liabilities which he owes or has incurred, exclusive of property exempt by law from levy and sale under an execution.

S. W. ROSENDALE.

190 Sworn to before me, December 23d, 1880.

J. HAMPDEN WOOD,
U. S. Circuit Court Commissioner,
Northern District of New York, Albany, N. Y.

(Endorsed:) No. 2848. U. S. Supreme Court Circuit Court of the U. S., North. Dist. of New York. The National Albany Exchange Bank agst. Charles A. Hills et al. Bond on appeal to United States Supreme Court. Approved as to form and sufficiency, Jan. 5th, 1881. Wm. J. Wallace. Filed Jan. 7, 1881.

IN THE CIRCUIT COURT OF THE UNITED STATES.

NORTHERN DISTRICT OF NEW YORK.

THE NATIONAL ALBANY EXCHANGE BANK
against.
CHARLES A. HILLS, Receiver of Taxes and MICHAEL E. HIGGINS, Marshal of the city of Albany. } In Equity.

CITY AND COUNTY OF ALBANY, *ss.:*

Nathaniel Niles being duly sworn, says that on the 6th day of January 1881, at this office, in the city of Albany,
191 N. Y., he served the annexed petition of appeal on Messrs. Hand, Hale & Bulkley, the attorneys for the plaintiff in above entitled action, by delivering to and leaving with a clerk in charge of their office a copy of the same. Deponent further says that he knew the person served as aforesaid to be a clerk in the office of the attorneys above named, and that they were absent therefrom.

NATHANIEL NILES.

Sworn to before me, January 7, 1881.

J. HAMPDEN WOOD,
U. S. Circuit Court Commissioner,
Northern District, N. Y.

192 (Petition of Appeal.)

IN THE CIRCUIT COURT OF THE UNITED STATES.

NORTHERN DISTRICT OF NEW YORK.

THE NATIONAL ALBANY EXCHANGE BANK
against
CHARLES A. HILLS, Receiver of Taxes and MICHAEL E. HIGGINS, Marshal of the city of Albany. } In Equity.

To the Honorable the Supreme Court of the United States:

The appeal of the above defendants Charles A. Hills and
193 Michael E. Higgins, respectfully showeth:

That on the 14th day of May, 1880, the above named complainant filed its bill in the Circuit Court of the United States for the Northern District of New York against the above named defendants and appellants, in which bill the plaintiff demanded as relief a perpetual injunction against the defendant Higgins restraining him from collecting as marshal of the city of Albany the amount of certain taxes (being over eight thousand dollars) and levied upon the stockholders of the corporation
194 plaintiff, and against the defendant Hills a like injunction restraining him from receiving any such sums. Such relief being founded upon allegations in the said bill that the taxes assumed to have been assessed upon said stockholders were assessed without jurisdiction and illegally, and that the statute of the State of New York (being chapter 761 of the Laws of 1866) under which such taxes were assumed to be assessed was wholly illegal and void, as being in violation of the act of Congress, section 5219 of the Revised Statutes of the United States, and mentioned and set forth in said bill. Such injunction was further urged on the ground that the said assessment was illegal, as having been made in violation of the said act of Con-
195 gress, and because the persons who made the assessment of such taxes intentionally disregarded the aforesaid act of Congress in making the assessment aforesaid. It was further alleged in said bill that the corporation plaintiff was substantially a trustee or stakeholder of the amount of the taxes assessed against its stockholders who had notified it not to pay the same, and that if defendants were allowed to collect such taxes, great and irreparable damage would thereby be sustained by the corporation plaintiff.

The defendants and appellants duly filed and served their answer to said bill, denying substantially most of the material allegations in the bill of complaint, and alleging further that no

196 tender or offer of any tax or portion thereof had been made to either defendant by or on the part of the plaintiff.

A replication on the part of plaintiffs was duly filed and served.

Proofs were duly taken before an examiner of the court, and on the sixth day of November, 1880, the action was duly tried at a Circuit Court duly held by and before the Honorable William J. Wallace, United States District Judge for the Northern District of New York, who, after due deliberation, granted a final decree in favor of the plaintiff, and which final decree was duly signed and enrolled pursuant to the rules and practice of the court, on the eleventh day of December, 1880, and by which final

197 decree the said statute of New York, above alluded to, was declared to be null and void as to the taxation of all stockholders in the bank of the corporation plaintiff and in all other national banking associations, and a perpetual injunction was granted restraining defendants, and all and each of their successors, from in any manner collecting any part or portion of such taxes and for $164.04 costs against defendants.

Wherefore these defendants and appellants appeal from the

198 whole of the said decree of the said Circuit Court of the United States, and respectfully pray that the decree of the said Circuit Court, and the bill, answer, pleadings, depositions, evidence, case and proceedings in the said cause may be sent to the Supreme Court of the United States without delay, and that the said Supreme Court will proceed to hear the said cause anew, and that the said decree of the Circuit Court and every part thereof may be reversed and a decree made dismissing said libel with costs, or such other decree as to such Supreme Court shall seem just.

Dated *December* 18, 1880.

R. W. PECKHAM,

199 *Solicitor for Defendants.*

R. W. PECKHAM,
Of Counsel.

(Endorsed:) No. 2848. Circuit Court of the United States, Northern Dist. of New York. The National Albany Exchange Bank against Charles A. Hills, receiver of taxes, and ano. Petition of appeal. R. W. Peckham, solicitor for defendants. The within appeal allowed this 5th day of January, 1881. Wm. J. Wallace. Filed January 7, 1881.

192 (Petition of Appeal.)

IN THE CIRCUIT COURT OF THE UNITED STATES.

NORTHERN DISTRICT OF NEW YORK.

THE NATIONAL ALBANY EXCHANGE BANK
against
CHARLES A. HILLS, Receiver of Taxes and MICHAEL E. HIGGINS, Marshal of the city of Albany.
} In Equity.

To the Honorable the Supreme Court of the United States:

The appeal of the above defendants Charles A. Hills and
193 Michael E. Higgins, respectfully showeth:

That on the 14th day of May, 1880, the above named complainant filed its bill in the Circuit Court of the United States for the Northern District of New York against the above named defendants and appellants, in which bill the plaintiff demanded as relief a perpetual injunction against the defendant Higgins restraining him from collecting as marshal of the city of Albany the amount of certain taxes (being over eight thousand dollars) and levied upon the stockholders of the corporation
194 plaintiff, and against the defendant Hills a like injunction restraining him from receiving any such sums. Such relief being founded upon allegations in the said bill that the taxes assumed to have been assessed upon said stockholders were assessed without jurisdiction and illegally, and that the statute of the State of New York (being chapter 761 of the Laws of 1866) under which such taxes were assumed to be assessed was wholly illegal and void, as being in violation of the act of Congress, section 5219 of the Revised Statutes of the United States, and mentioned and set forth in said bill. Such injunction was further urged on the ground that the said assessment was illegal, as having been made in violation of the said act of Con-
195 gress, and because the persons who made the assessment of such taxes intentionally disregarded the aforesaid act of Congress in making the assessment aforesaid. It was further alleged in said bill that the corporation plaintiff was substantially a trustee or stakeholder of the amount of the taxes assessed against its stockholders who had notified it not to pay the same, and that if defendants were allowed to collect such taxes, great and irreparable damage would thereby be sustained by the corporation plaintiff.

The defendants and appellants duly filed and served their answer to said bill, denying substantially most of the material allegations in the bill of complaint, and alleging further that no

196 tender or offer of any tax or portion thereof had been made to either defendant by or on the part of the plaintiff.

A replication on the part of plaintiffs was duly filed and served. Proofs were duly taken before an examiner of the court, and on the sixth day of November, 1880, the action was duly tried at a Circuit Court duly held by and before the Honorable William J. Wallace, United States District Judge for the Northern District of New York, who, after due deliberation, granted a final decree in favor of the plaintiff, and which final decree was duly signed and enrolled pursuant to the rules and practice of the court, on the eleventh day of December, 1880, and by which final

197 decree the said statute of New York, above alluded to, was declared to be null and void as to the taxation of all stockholders in the bank of the corporation plaintiff and in all other national banking associations, and a perpetual injunction was granted restraining defendants, and all and each of their successors, from in any manner collecting any part or portion of such taxes and for $164.04 costs against defendants.

Wherefore these defendants and appellants appeal from the

198 whole of the said decree of the said Circuit Court of the United States, and respectfully pray that the decree of the said Circuit Court, and the bill, answer, pleadings, depositions, evidence, case and proceedings in the said cause may be sent to the Supreme Court of the United States without delay, and that the said Supreme Court will proceed to hear the said cause anew, and that the said decree of the Circuit Court and every part thereof may be reversed and a decree made dismissing said libel with costs, or such other decree as to such Supreme Court shall seem just.

Dated *December* 18, 1880.

R. W. PECKHAM,

199 *Solicitor for Defendants.*

R. W. PECKHAM,
Of Counsel.

(Endorsed:) No. 2848. Circuit Court of the United States, Northern Dist. of New York. The National Albany Exchange Bank against Charles A. Hills, receiver of taxes, and ano. Petition of appeal. R. W. Peckham, solicitor for defendants. The within appeal allowed this 5th day of January, 1881. Wm. J. Wallace. Filed January 7, 1881.

IN THE CIRCUIT COURT OF THE UNITED STATES.

200 NORTHERN DISTRICT OF NEW YORK.

THE NATIONAL ALBANY EXCHANGE BANK
against
CHARLES A. HILLS, Receiver of Taxes, and MICHAEL E. HIGGINS, Marshal of the City of Albany. } In Equity.

CITY AND COUNTY OF ALBANY, *ss.:*

Nathaniel Niles, being duly sworn, says that on the 6th day of January, 1881, at their office, in the city of Albany, N. Y., he served the annexed citation on Messrs. Hand, Hale & Bulk-
201 ley, the attorneys for the plaintiff in the above entitled action, by delivering to and leaving with a clerk in charge of their office a copy of the same. Deponent further says that he knew the person served as aforesaid to be a clerk in the office of the attorneys above named, and that they were absent therefrom.

NATHANIEL NILES.

Sworn to before me
January 7, 1881.

J. HAMPDEN WOOD,
U. S. Circuit Court Commissioner,
Northern Dist. N. Y.

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IN THE SUPREME COURT OF THE UNITED STATES.

THE NATIONAL ALBANY EXCHANGE BANK
against
CHARLES A. HILLS, Receiver of Taxes, and MICHAEL E. HIGGINS, Marshal of the City of Albany. } Citation.

By the Honorable William J. Wallace, one of the Judges of the Circuit Court of the United States for the Northern District of New York, to the National Albany Exchange Bank, plain-
203 tiff above named:

Whereas, Charles A. Hills and Michael E. Higgins, the defendants in above entitled action, have lately appealed to the Supreme Court of the United States from a decree lately rendered in the Circuit Court of the United States for the Northern District

of New York, in favor of you the said The National Albany Exchange Bank, and the said defendants have filed the security required by law, you are therefore hereby cited to appear before the Supreme Court, at the city of Washington, on the second Monday of October, 1881, to do and receive what may appertain to justice to be done in the premises.

Given under my hand, at the city of Syracuse, in the
204 Northern District of New York, in the Second Circuit, the 5th day of January, 1881.

W. J. WALLACE.

(Endorsed:) No. 2848. In the Supreme Court of the United States. The National Albany Exchange Bank against Charles A. Hills, receiver of taxes, and ano. Copy Citation. R. W. Peckham, solicitor for defendants. U. S. Circuit Court, N. D. of N. Y., January 7, 1881. William H. Bright, clerk.

UNITED STATES OF AMERICA, }
NORTHERN DISTRICT OF NEW YORK, } *ss.:*

I, William H. Bright, clerk of the Circuit Court of the
205 United States of America, for the Northern District of New York, do hereby certify that I have compared the writings annexed to this certificate, and they are true copies of their respective originals and are correct transcripts therefrom, now on file and remaining of record in my office, being a full and complete copy of the record and proceedings in the suit of the National Albany Exchange Bank v. Charles A. Hills, receiver of taxes and Michael E. Higgins, marshal of the city of Albany.

In testimony whereof, I have hereunto set my hand and duly affixed the seal of the said court, at the city of
[L. S.] Utica, in said district, this 1st day of March, A. D. 1881.

WILLIAM H. BRIGHT,
Clerk.

206 SUPREME COURT OF THE UNITED STATES.

CHARLES A. HILLS, Receiver of Taxes, and MICHAEL E. HIGGINS, Marshal of the city of Albany, Appellants,
against
THE NATIONAL ALBANY EXCHANGE BANK, Appellee.

To the Clerk of the Supreme Court of the United States:

SIR.— You will please enter my appearance as solicitor and counsel for the National Albany Exchange Bank, appellee, in the
207 above entitled cause.

Dated *November 29th*, 1881.

Yours, etc.,
MATTHEW HALE,
25 *North Pearl street, Albany, N. Y.*

Supreme Court of the United States. Charles A. Hills, receiver of taxes, and Michael E. Higgins, marshal of the city of Albany, appellants, against The National Albany Exchange Bank, appellee. Copy notice of appearance. Matthew Hale, solicitor and counsel, for appellee, 25 North Pearl street, Albany, N. Y.